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LEGISLATIVE HISTORY

Public Law 509--72nd Congress

Chapter 614--2^d Session

U. S. 1993

TABLE OF CONTENTS

Digest of Public Law 509	1
Index and Summary of History on U. S. 4993	1

DIGEST OF PUBLIC LAW 509

CONTINUATION OF SMCOTT HALL POWERS ACT. Continues until not after December 31, 1945, the following titles of this Act: I, ICC regulation of motor and water carriers; II, acquisition and disposition of property; III, priorities; IV, purchase of Government obligations by Federal Reserve banks; V, waiver of navigation and inspection laws; VI, requisition powers; VII, political activity; VIII, free postage for members of armed forces; IX, acceptance of gifts; and X, utilization of war information. Amends Title III so as to provide for judicial review of suspension orders by the U. S. district courts for the district in which the petitioner has his principal place of business.

INDEX AND SUMMARY OF HISTORY OF H. R. 4993

June 9, 1944	H. R. 4993 was introduced by Rep. Sumners and was referred to the House Committee on the Judiciary. Print of the bill as introduced.
November 20, 1944	Hearings: House, H. R. 4993.
November 28, 1944	House Committee reported H. R. 4993 with amendments, House Report 1959. Print of the bill as reported.
November 28, 1944	House Rules Committee reported H. Res. 660 for the consideration of H. R. 4993.
November 29, 1944	House agreed to H. Res. 660.
November 30, 1944	House debated H. R. 4993. Passed as reported.
December 1, 1944	H. R. 4993 was referred to the Senate Committee on the Judiciary. Print of the bill as referred.
December 4, 1944	Senate Committee reported H. R. 4993 without amendment. Senate Report 1301. Print of the bill as reported.
December 8, 1944	Senate debated and passed H. R. 4993.
December 20, 1944	Approved. Public Law 509.



Week
-tals

H. R. 1003

FILE

78TH CONGRESS
2D SESSION

H. R. 4993

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1944

Mr. SUMNERS of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title XV, section 1501, of the Second War Powers
4 Act, 1942, approved March 27, 1942, is amended to read
5 as follows:

6 “SEC. 1501. Titles I to VII, inclusive, and titles IX,
7 XI. and XIV of this Act, and the amendments to existing
8 law made by any such title, shall remain in force only until
9 December 31, 1945, or until such earlier time as the Con-

1 gress by concurrent resolution, or the President, may desig-
 2 nate, and after such amendments cease to be in force any
 3 provision of law amended thereby shall be in full force
 4 and effect as though this Act had not been enacted; but
 5 no court proceedings brought under any such title shall
 6 abate by reason of the termination hereunder of such title."

78TH CONGRESS
 2d Session

H. R. 4993

A BILL

To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

By Mr. SUMNERS of Texas

JUNE 9, 1944

Referred to the Committee on the Judiciary



TO AMEND AND EXTEND THE SECOND WAR POWERS ACT, 1942

HEARINGS

BEFORE

SUBCOMMITTEE NO. 4 OF THE COMMITTEE ON
THE JUDICIARY

AND BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

SEVENTY-EIGHTH CONGRESS

SECOND SESSION

ON

H. R. 4993

A BILL TO AMEND PUBLIC NUMBERED 507, SEVENTY-
SEVENTH CONGRESS, SECOND SESSION, AN ACT
TO FURTHER EXPEDITE THE PROSECUTION
OF THE WAR, APPROVED MARCH 27, 1942,
KNOWN AS THE SECOND WAR
POWERS ACT, 1942

NOVEMBER 20, 22, AND 27, 1944

Serial No. 20

Printed for the use of the Committee on the Judiciary



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WASHINGTON : 1944

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HOUSE OF REPRESENTATIVES

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Mr. HOBBS, *Chairman*

Mr. SATTERFIELD
Mr. FEIGHAN

Mr. HANCOCK
Mr. SPRINGER
Mr. FELLOWS

CONTENTS

NOVEMBER 20, 1944

Statement by—	Page
Hon. John Lord O'Brian, general counsel, War Production Board	1, 4
Hon. H. B. Cox, Department of Justice	2
Hon. Smith W. Purdum, Second Assistant Postmaster General	3
Hon. John L. Rogers, member of the Interstate Commerce Commission	16
Hon. Richard L. Merrick, Office of the Under Secretary of War	16
Maj. David B. Gideon, Office of the Chief of Engineers, War Department	17
Hon. Patrick H. Hodgson, Assistant General Counsel, Navy Department	20
Hon. Hugh A. Ranta, Office of the General Counsel, Treasury Department	20
Hon. Charles Nutting, associate solicitor, War Food Administration	21
Letter from Hon. D. W. Bell, Acting Secretary of the Treasury	20
Letter from Dr. James C. Nelson, Garrett Park, Md.	21

NOVEMBER 22, 1944

Statement by—	Page
Hon. Aaron L. Ford, general counsel, Select Committee of the House of Representatives to Investigate Acts of Executive Agencies Which Exceed Their Authority	23
Hon. Howard W. Smith, a Representative in Congress from the State of Virginia, and chairman of the Select Committee to Investigate Executive Agencies	30
Hon. Laurence M. Lombard, assistant general counsel, War Production Board	32, 52, 74
Hon. Thad F. Wasielewski, a Member of Congress from the State of Wisconsin	43
Mr. Louis K. Comstock, electrical engineer, New York City	47
Col. Fred C. Foy, Director of Purchases, War Department	50
Hon. Patrick H. Hodgson, assistant general counsel, Navy Department	51
Mr. Malcolm McComb, Director, Procurement Policy Division, War Production Board	52
Hon. Loring M. Staples, assistant general counsel, War Production Board	53
Hon. Richard H. Field, general counsel, Office of Price Administration	68
Communication to Congressman Hobbs from Hon. Loring M. Staples, assistant general counsel, War Production Board, with respect to the Southern Stove Works, Inc., of Richmond, Va.	37

NOVEMBER 27, 1944

Statement by—	Page
Hon. Loring M. Staples, assistant general counsel, War Production Board	77
Hon. Julius M. Amberg, special assistant to the Secretary of War	83
Hon. Robert P. Patterson, Under Secretary of War	90, 106
Hon. J. A. Krug, Chairman, War Production Board	98
Hon. H. S. Hensel, general counsel, Navy Department	107
Letter from Hon. James F. Byrnes, Director of War Mobilization	109
Letter from Laurence M. Lombard, assistant general counsel, War Production Board, relative to the distribution of shotguns	109



TO AMEND AND EXTEND THE SECOND WAR POWERS ACT, 1942

MONDAY, NOVEMBER 20, 1944

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE (No. 4) OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee this day met, Hon. Sam Hobbs (chairman of the subcommittee) presiding.

Mr. HOBBS. We have met to consider H. R. 4993, a bill to extend the time of the Second War Powers Act, which is as follows:

[H. R. 4993, 78th Cong., 2d sess.]

A BILL To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title XV, section 1501, of the Second War Powers Act, 1942, approved March 27, 1942, is amended to read as follows:

"Sec. 1501. Titles I to VII, inclusive, and titles IX, XI, and XIV of this Act, and the amendments to existing law made by any such title, shall remain in force only until December 31, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate, and after such amendments cease to be in force any provision of law amended thereby shall be in full force and effect as though this Act had not been enacted; but no court proceeding brought under any such title shall abate by reason of the termination hereunder of such title."

We have with us the Honorable John Lord O'Brian, general counsel for the War Production Board; also Mr. H. B. Cox of the Department of Justice, and others. We shall be very delighted to hear Mr. O'Brian at this time.

STATEMENT OF HON. JOHN LORD O'BRIAN, GENERAL COUNSEL, WAR PRODUCTION BOARD

Mr. O'BRIAN. Mr. Chairman and gentlemen, I appear here because of the interest of the War Production Board in title III of the present statute, which is the title which confers upon the President the so-called priority powers. Under the present statute, as now written, those powers will expire on the 31st of December of this year unless Congress, by concurrent resolution, terminates them, or unless the President designates an earlier day.

The effect of this bill which is before you is simply to extend those provisions. 1 year, until the 31st of December, 1945.

Our interest in this statute, of course, is obvious, because under this grant of priority powers, so-called, has been set up the entire structure of war controls, which have made possible the American achievements in the field of war production.

All the orders that have been issued have been issued pursuant to these powers, and the necessity of their continued existence is I think fairly obvious. It seemed to us that it would be helpful, perhaps, to the committee if I made a fairly brief statement, in the first place, as to what we conceive our powers to be under this statute; the way in which we have interpreted those powers; secondly, the way or the methods by which we have exercised those powers; and thirdly, the way in which we have undertaken to enforce and maintain by law the allocation power and prevent its abuse. And then also I would like to refer to certain delegations of this authority that have been made either by the President or by the Chairman of the War Production Board to various other agencies. If I may proceed in that way.

Mr. HOBBS. We would like to have you do so, and we appreciate your kindness in appearing and giving us the benefit of your testimony. But before you do so, I think possibly it might be well to have you clarify the issues that are before us at this time. There were 15 titles in the original act?

Mr. O'BRIAN. I am interested only in title III. The Attorney General is here and I think can speak for the other titles.

Mr. HOBBS. I was going to suggest that it might be well, from the standpoint of the committee, to have clarified for us why there are four or five titles that were included in the original act, the extension of which is not asked. I understand some of them have become obsolete, some of them have been included in other legislation—and if it is convenient, we would like to have the act that we passed explained along that line—because if there are any of those titles that are not necessary or have been included in other legislation, of course, we do not care to fool with them. But if the contrary be true, then we want to protect our act.

Mr. COX. May I make a short statement, Mr. Chairman?

Mr. HOBBS. If it is convenient, yes; and if not, you may do so at any other time.

Mr. O'BRIAN. I think it would be well for Mr. Cox to make his statement at this time.

STATEMENT OF HON. H. B. COX, DEPARTMENT OF JUSTICE

Mr. COX. May it please the committee, there is only one title in this act which, in fact, is being dropped from the extension. That is title 8, which is entitled, "Protection of war industries and protection of resources subject to hazards of forest fires." That appears on page 6 of the reprint that I am using.

The Federal Security Agency has advised us and, I think, has advised the committee, that the extension of that title is unnecessary. I assume that is so because it relates to the use of the Civilian Conservation Corps personnel, and that organization, of course, is no longer in existence. Otherwise there are three titles that are not extended, but they are not extended because they are titles which were not limited in time, in the same way the other titles in the bill were, so no extension was necessary.

Mr. HOBBS. I believe there has been included in a bill out of the Post Office and Post Roads Committee a provision which dealt with the general subject; is that correct?

Mr. Cox. That is correct. I think that bill has passed the House, but not the Senate, although that title is included in our bill, because this bill was drawn and introduced before the other bill had passed the House. There is that duplication.

The CHAIRMAN. On that point, is the retention of that item necessary? You say it has not passed the Senate. But if it should be retained in this bill, would there be confusion?

Mr. Cox. I think probably it would be undesirable to have two bills passed doing the same thing.

The CHAIRMAN. The other bill has not passed the Senate?

Mr. Cox. That is my understanding.

The CHAIRMAN. If the legislation is necessary, why not retain it in this bill, unless there will be a conflict?

Mr. Cox. We certainly would have no objection to that, and I do not think there would be any confusion. It is just simply a question of extending the time. That is all that this bill does.

Mr. HOBBS. I would appreciate it if you would, for the convenience of the committee, have someone keep tab on the Senate's agenda and let us know about that. Then we will have not only our own sources of information but yours as well. It seems to me we should not take that matter up if it has been taken care of otherwise.

Mr. Cox. Perhaps I might just say this at this point, as I said to you before the committee meeting convened, sir, as you know, the Department of Justice has no direct responsibility under this bill. We do not administer any of these powers. We did, however, assume the obligation of getting the attitude of the various agencies concerned, and each of them has written a letter to the committee explaining why that agency believes the extension of powers is desirable. I did not plan to make any additional statement, because representatives of those agencies are here if the committee wishes to ask them any questions.

Mr. HOBBS. If you will ask the Post Office Department to keep us advised.

Mr. Cox. Thank you, sir.

STATEMENT OF SMITH W. PURDUM, SECOND ASSISTANT POSTMASTER GENERAL

Mr. PURDUM. Mr. Chairman, I am here representing the Post Office Department. We came over on verbal invitation and are appearing in reference to title IX and with reference to H. R. 4949. H. R. 4949 was introduced in the House of Representatives based on a letter dated May 20, 1944, from the Postmaster General addressed to the Speaker of the House of Representatives.

Mr. HOBBS. That has been referred to our committee and we are thoroughly familiar with that.

Mr. PURDUM. A similar letter was addressed to the President of the Senate. This bill, H. R. 4949, passed the House on June 19, 1944. But it just occurred to me, if the Congress is going to extend the time on Public Law 507, it may keep title IX and then it would not be necessary to enact H. R. 4949 into law, which bill deals with only one particular phase of the War Powers Act. That would be entirely satisfactory to us; that is, have the bill that is here (the Second War

Powers Act) retain title IX. The Post Office desires that title IX, which grants free first-class letter mail privileges to our armed forces, be continued.

Mr. HANCOCK. It does.

Mr. PURDUM. But I understand some gentleman was asked to keep a check on what was done with it over in the Senate.

Mr. HOBBS. That is right.

Mr. PURDUM. This committee could advise the Senate committee, which has not yet considered the bill H. R. 4949, that you propose to continue title IX in the bill which is before you gentlemen.

Mr. HOBBS. It would seem to be the thought that there might be some confusion if there were two pieces of legislation pending on the same subject at the same time.

Mr. PURDUM. That is true. That is the reason I suggest that if this committee and the House of Representatives continue title IX, let the House bill, which only dealt with title IX, remain dormant over in the Senate. I am sure Senator McKellar, to whom the bill was referred, as chairman of the Post Office and Post Roads Committee, would be pleased to be advised of your wishes.

Mr. HOBBS. We certainly appreciate your suggestion. We shall look into it and confer with Senator McKellar about it.

Mr. PURDUM. With reference to the free mail of our military forces, it may be of interest to the committee to know that it approximates over 2,000,000,000 letters a year. And if the postage at the 3-cent rate were paid, the postal revenue would approximate \$65,000,000 a year.

Mr. HANCOCK. How many Christmas packages are being sent, Mr. Purdum?

Mr. PURDUM. It is estimated there will be approximately 80,000,000 parcels to our forces across the seas.

Mr. HANCOCK. Going outside the United States?

Mr. PURDUM. Yes, sir; to the armed forces.

Mr. HANCOCK. From this country?

Mr. PURDUM. From the people in this country to the men and women in the Army and Navy across the sea.

Mr. HANCOCK. Going outside of the country to the men overseas?

Mr. PURDUM. Yes, sir; not including that which is being sent to those who are stationed in continental United States.

Mr. HOBBS. That is fine. We wish there were a hundred million. We appreciate your statement very much, Mr. Purdum.

STATEMENT OF HON. JOHN LORD O'BRIAN—Resumed

Mr. HOBBS. Mr. O'Brien, you are appearing solely with reference to title III, I understand.

Mr. O'BRIAN. Yes.

Mr. HOBBS. We will be glad to hear you.

Mr. O'BRIAN. This present statute is the final evolution of an earlier statute enacted in 1940, as amended in 1941. The allocation power which is embraced in this statute is a war power of a type hitherto unknown in our national policy.

The pertinent section of the statute provides first that the President may give to certain contracts a priority in delivery over other contracts or orders and that he may require the acceptance and perform-

ance of those contracts in preference to other contracts. The statute in conferring the so-called allocation powers does it in very few lines, which read:

Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

This statute also carried with it the right to make rules and regulations to secure the orderly administration of the powers.

The President may exercise—
the statute reads—

any power, authority or discretion conferred upon him by this section, through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.

But I emphasize that it is out of these sentences that I first read that the powers have been evolved, and there have been constructed the so-called controls for wartime production in the United States.

The Executive orders of the President vested, first, the Office of Production Management, and later the Chairman of the War Production Board, with all the powers that he received relative to the allocation of materials other than food. Certain redelegations that I will speak of in a moment, however, have since been made in limited fields to other agencies.

This grant of allocation power is very broad in its terms. Standards in their generally accepted meaning are lacking. The only condition precedent to the assumption of jurisdiction to allocate a material or a facility is a finding of a shortage. To invoke this power the President must first be satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage of a material or a facility "for defense or for private account or for export." Now, that is the nub of the statute; that the grant of wartime power which relates to production of all types used in the national defense.

In interpreting this statute we have always taken the position that because of the very broad character of these powers we should not be dogmatic and define too strictly in advance the interpretation of the authority conferred. We have, however, interpreted the word "shortage" because it is in the finding of a shortage that the whole power really rests. By administrative practice we have interpreted the word "shortage" as not a nominal shortage, but such a substantial shortage and a shortage of such a character of materials or facilities as would have the certain and definite effect of impairing production for military purposes or essential civilian needs.

This phrase we have never defined beyond that description and it is upon that interpretation that we have proceeded to administer these powers for the past 3½ years.

Once a finding of a shortage is made then there are further requirements which must be met. There must be a finding that the allocation of the particular material or the facility is "necessary or appropriate in the public interest and to promote the national defense." Both of those elements must be present; and also the manner, the conditions, and the extent of the allocation must be "necessary or appropriate" for that particular purpose.

Now, the words "upon such conditions"—that is, the power to allocate "upon such conditions" as may be deemed necessary or appropriate is obviously a very broad phrase, but in the administrative interpretation we have given that phrase a more practical and restricted meaning. If it were literally construed this phrase might have been used to impose extraneous conditions and lead to doubt as to its proper exercise, but by administrative rulings we have interpreted that phrase to mean a condition affecting the use of a material or a facility, rather than any extraneous condition that might be considered. We have, therefore, restricted that phrase by administrative interpretation to the production of war and essential civilian goods, in the manner I have described.

Of course, in the enactment of this statute the Congress was certainly justified in conferring powers in such broad terms upon the President; also upon reflection I think you will see the nature of the subject matter made it impossible to lay down technical standards in the ordinary sense for the exercise of that power and any such attempt might have endangered the speed of action with which we had to act when confronted with this emergency and probably would have endangered the war-production programs. Nevertheless, we have felt that the very breadth of the power imposed the responsibility upon the War Production Board, despite the necessity for freely exercising these great powers, to see to it that the powers were not abused and were not distorted nor expanded beyond the needs of war production. The Chairman of the War Production Board, and his predecessor, the Director General of the Office of Production Management, both have always concentrated their attention on the main purpose of securing delivery of goods to meet the urgent national defense needs and on giving preference to certain contracts in the allocation of shortage material.

Read in the light of the Executive order, the War Production Board's job, as we see it, is to aid war production and aid also that production for civilian purposes necessary to assure the most effective prosecution of the war. And, it is significant in this connection that the pertinent provisions of each of the three statutes—this statute and the two preceding statutes—originated in and were sponsored by the War Production Board or its predecessor, which were concerned primarily with the production, distribution, and procurement for the defense of the United States and for the waging of war. So much for the interpretation that we have placed upon our powers. And I repeat that we have at no time sought to expand the powers. We have constantly endeavored to see that they were not distorted.

Now as to the method of exercising the powers: When it comes to the method of exercising the powers the statute is silent. The statute says nothing about any orders or procedures. It leaves entirely to the discretion of the President the method which is to be followed.

The War Production Board in exercising these powers—and its predecessor, the Office of Production Management—were and are of course being confronted with constantly changing conditions growing out of the evolution of the war itself and changes in types of weapons, and so forth. Because of this it has developed a variety of procedures. In some cases we have used these powers in an affirmative way, that is to say, we have given priorities to contracts and orders to make sure

that first things are produced and delivered first. At other times we have used these powers with a negative approach, with the idea of preventing waste and misuse of scarce materials. We have done that by prohibiting their use for less essential articles. We have sometimes required standardization and simplification of types of products but only where the result would be to conserve materials, speed up production, or make products interchangeable. That has not been one of our primary activities, but we have issued scores of so-called conservation and limitation orders with the idea of conserving scarce materials so that they may be more readily available for the direct purposes of the war. But at all times we have concentrated, I repeat, on expediting, and assuring production for war and essential civilian purposes.

One of our main efforts has been to define standards in our orders, right in the orders themselves, and in our procedures to assure consistent and as equitable treatment as was possible under the circumstances. In this way, over the period of nearly 4 years there has been developed a body of administrative and legal policy against which I think it is fair to consider the extension of this act.

Turning for a moment to the organization of the Board as distinguished from the orders—may I interpolate at this time that there are more than 600 of these orders now outstanding. There have been more. Sometimes we revoke an order. Sometimes we make a new order. But there are more than 600 of these orders now outstanding and there are many hundreds of amendments and supplements to these orders. There are literally thousands of individual actions which have been found necessary to secure an orderly working of the whole plan.

The organization of the War Production Board itself, has been designed for this same purpose of orderly operation. The Board is divided into divisions. Some of those represent the principal materials, steel, copper, aluminum, lumber, chemicals, and so forth.

Other divisions represent a whole industry, like automobiles or textiles, where there are a great mass of problems of pretty much the same generic type. Each division is staffed with men who are familiar with the respective industries and those men work together with an industry advisory committee, which is purely advisory in character and is composed of representatives from the various companies in the industry.

These industry advisory committees are set up under a plan devised and instituted by former Attorney General Jackson.

Aside from these divisions, the Material Division and the industry divisions we have another set of divisions that I will not stop to discuss at this time, the staff divisions. We also have interagency committees, one of which is the requirements committee, the purpose of which committee is to determine the needs of the Army, Navy, and other claimant agencies. It is intended through this set-up to bring out in the discussion the effect of each proposed action that we take. It is obvious that when we issue an order it dislocates existing conditions. That is, in fact, its inevitable effect because it is aimed to speed up the procurement of war products. Consequently, before an order is issued all of the divisions which have any relationship in that particular field have their say and offer their advice as to what should be done. There is really a very general discussion.

Sometimes, this has led to rumors of internal disagreement in the Board, but it is the American way and the best way we have been able to devise to assure thorough consideration of all the factors involved in any particular problem—particularly in fields where there are few or no precedents.

With your permission I will file a statement of the development and history of this priority and allocation system. This is very simple and very short and I think it is unnecessary to discuss it at this time.

The CHAIRMAN. Without objection,* that permission is granted. (The statement referred to follows:)

DEVELOPMENT OF PRIORITIES AND ALLOCATION SYSTEM

The directing and the controlling of the flow of materials under this statutory authority has been in a state of gradual evolution since the earliest days of the Office of Production Management. The methods used have changed and developed in response to the changing materials situation.

Preference ratings, the earliest device for directing the flow of materials, were originally intended merely to indicate the order of delivery. These ratings were granted originally by preference rating certificates issued to the purchaser of finished products. Preference ratings were a form of end use control applied to the finished products to be delivered under particular contracts, such as guns, tanks, or ships. These ratings were extendible to suppliers and sub-suppliers, but the extensions continued to be related to the original contracts. Later there were developed "P" orders, which granted preference ratings in blanket form to a class of producers or persons.

As long as the material supply was adequate, the preference ratings served their purpose and assured the delivery of first things first. As shortages in materials developed, no one could obtain delivery of a critical material or part without a preference rating, and the use of ratings naturally expanded. The uncontrolled issuance of such ratings inevitably resulted in more rated orders coming through to the supplier of the raw material than there was material to fill them. Unbalanced deliveries and partially finished products were the inevitable consequence.

To meet this situation, there was developed a form of treatment at the source—at the raw material or the beginning-of-production level. This was the so-called materials or "M" order. In general, such orders provided that a particular material might be shipped only to approved uses. These orders represented the first forms of true allocation as distinguished from priorities control. They usually applied merely to an allocation of materials in their raw forms or in primary or mill shapes.

It soon became apparent that war production could not successfully be added to normal peacetime production and that there must be a reduction in the less essential demands which, under boom conditions, were currently competing for these materials. Thus other controls at the finished product end of the production cycle were developed; namely, the conservation and the limitation ("L") orders. The former reduced or prohibited the use of scarce materials in the manufacture of certain articles, such as copper or brass in spittoons, book-ends, or decorative trim. The latter limited or prohibited entirely the manufacture of certain products, such as refrigerators or automobiles, regardless of the materials used in their manufacture. Both types of order were aimed at reducing the demand for critical raw materials, thus accomplishing an allocation of the materials to the urgent uses through elimination of nonessential uses.

The next step in the development of material controls was the establishment of the so-called Production Requirements Plan ("P. R. P"), which applied to all major users of metal. This plan was designed to reduce the tremendous amount of detail involved in the extension of individual ratings.

Under it a company could estimate its material requirements for a quarterly period in advance and, taking inventories into consideration, it was then assigned the proper preference ratings to cover its requirements for an entire quarter.

A still tighter control of the three major metals—steel, aluminum, and copper—was established with the evolution of the production requirements plan into the so-called controlled materials plan (C. M. P.). This plan was found necessary

as a means of balancing total demand of all manufacturers for these critical metals against total supply. By requiring material estimates in advance from the military and civilian claimants, it has forced a cutting back of military and essential civilian demand during a given period of time to the estimated supply. Also, through giving reasonable assurance that the approved demands for a period will be met, this plan has gone far toward assuring balanced production to individual manufacturers.

Thus through giving preference to certain orders and certain manufacturers and through limiting and prohibiting the use of materials for certain purposes and the manufacture of certain products, there has been developed a system of controls which has met the demands of war production and essential civilian uses. This whole system is merely a method of selection of those uses to which scarce materials should go in the interests of the war effort and of cutting off the flow of materials and products from those uses where it is determined they should not go.

Thus the exercise of the authority to allocate involves two phases:

(1) The affirmative directing of shortage material to approved essential users; and

(2) A withholding of shortage material from other users.

Mr. O'BRIAN. In the enforcement of our orders and in the maintenance of the system we depend, frankly, very largely upon the support of public opinion and public opinion of industry. We have always had a feeling that it was peculiarly necessary for us to secure the confidence, in our fairness and impartiality, insofar as we could, of the people we are dealing with.

We have a form of allocation commonly called the suspension order. When it was discovered back in 1941 that a concern which had a priority had gotten a large amount of critical materials for a particular war use and then used it up making juke boxes and coin machines the question arose as to how that particular type of problem should be dealt with. There is nothing in the statute expressly on that subject. There was at that time no criminal feature in the statute, and we therefore devised the so-called suspension order procedure. After the passage of the Second War Powers Act there were criminal sanction provisions.

But even if a man were prosecuted under the penalty provision that would not necessarily affect the use of the materials that he happened to have obtained illegally, so the suspension order is still used.

This suspension-order procedure was not brought into existence overnight. When the first flagrant case arose Mr. Nelson was Director of Priorities. Under the recommendation of the general counsel and the Director of Priorities, the Office of Production Management itself—Messrs. Knudsen, Hillman, and the late Secretary Knox and Under Secretary of War Patterson being present—gave careful consideration to the procedure and authorized what is still substantially our procedure. That is to say, when we have good reason to believe that an order has been violated, and usually that is not difficult to determine because the written records usually reveal that, a so-called charging letter is sent to the concern telling the concern as explicitly as possible what we believe to have been its violation. Then that concern has the right to appear before a Compliance Commissioner, who, in a very informal way hears what is to be said by the parties. If he comes to the conclusion that there has been a violation he makes formal findings, and reports those findings and his recommendations for a suspension-order to the Director of the Compliance Division.

Such reports and recommendations are reviewed carefully by the office of the Director of Compliance and the legal staff in Washington, in order to make sure that any recommended suspension order is consistent with the allocation policy for the particular material and is clearly within our legal authority. The Director of Compliance and the general counsel have the authority to reduce the severity of a recommended suspension order but may not make it more severe than recommended by the compliance commissioner who heard the case.

The main effort is to make sure that the effect of any suspension order is to limit the use of materials in a way that will correct the abuse which has happened. In some cases we have forbidden a respondent the use of scarce materials altogether if he is a constant violator. Those orders, however, are very rare.

There is an appeal from these orders. There is an appeal to the Chief Compliance Commissioner, who is appointed by the Chairman. This official happens to be a trial lawyer of long experience and high standing, and he has the power to modify or revoke one of these suspension orders.

The compliance commissioners, I should interpolate, are not a part of the Legal Division. They are lawyers, ex-judges, and professional men, as a general rule, not presently engaged in the practice of law. They are not appointed by the Legal Division; they are appointed by the Chairman of the Board and they are charged by him to report solely to him, and they are in no way dependent upon the general counsel and in no way subject to his advice or influence. That is to say, the prosecuting function, if I may call it such, and the deciding function are entirely separate under this system.

In all of this period, a little over 3 years that this system has been in force, there have been about 1,800 of these hearings; about 420 cases have been referred to the Department of Justice for action. Of these, sentences have already been obtained in 191 cases. Six hundred and forty-two suspension orders were issued down to the first of October, and 197 consent orders. Appeals have been taken from those orders, in the way I have described, in only 135 cases out of the sum total in excess of 800, and in 53 of those cases the orders have either been modified or revoked by the Chief Compliance Commissioner.

While we have always conceded and the courts have agreed that the War Production Board is without power to issue one of these suspension orders as a penalty or sanction, for the purpose of penalizing, nevertheless the orders have been upheld by the courts as a necessary part of the allocation system. The leading case in this field is *Stewart v. Bowles* (322 U. S. 398 (1944)). What the suspension order really is, is an allocation away from a misuser of materials for the time being. It is usually limited in its terms. The orders rarely run for more than 4 months, except in so-called quota cases, which sometimes run longer.

As I said, this statute says nothing about procedure, but in the interest of what we conceive to be fairness we set up, some years ago, an appeals procedure applicable to all of the general orders and regulations of the Board. In some situations a person aggrieved by action of the Board may appeal in the first instance to the Administrator of the order and in others he may go directly to the Appeals Board.

This Appeals Board consists of a five-man Board appointed by the Chairman, and is in no way connected with the Legal Division. That five-man Board sits practically continuously. Its procedures are designedly informal. The appellant may appear and make a statement orally, or file a brief, or file a document, the idea being to do justice as promptly as possible, and by rule of thumb, of common sense, rather than to deal with legal technicalities. The decision of that Board cannot be reversed by anybody except the Chairman himself.

I think a word as to the types of appeal might be helpful at this point.

There are three types of appeals in the War Production Board procedure. These appeals deal with different matters and have very different consequences, so I should like to set forth, in detail, the distinctions.

The first type of appeal is really an application for priority assistance or for an allocation of materials under the terms of an order. This application is in the nature of a routine request for assistance and is dealt with by the Administrator or the Division concerned. For example, when the supply of raw material is limited, the order may require applications to be filed each quarter. The material is then divided up among the manufacturers by making allotments for the products most important for the prosecution of the war. The request of the manufacturer for the allotment is not ordinarily a request for relief because of any individual and exceptional hardship peculiar to him as compared to other manufacturers in the same industry. But if the allotment results in that kind of hardship, the manufacturer may request its reconsideration and the Division may certify the case to the Appeals Board.

The second type is a request that, in spite of the general prohibitions or requirements of an order, the appellant be given an exception to it on the ground that compliance with the general rule works a particular and unreasonable hardship on him. In a few instances a field office may grant relief. In the majority of cases the Industry Division may grant relief, and in all cases the Appeals Board has this authority. A denial in any case of this type is final only if it is by or on the recommendation of the Appeals Board.

The third type is an appeal in the judicial sense from a suspension order which is an allocation away from untrustworthy users of critical materials or facilities. The suspension order has been issued on the recommendation of a compliance commissioner and the appeal is to the Chief Compliance Commissioner.

It would be literally impossible for the War Production Board to exercise the allocation power in anything approaching a sound or efficient basis if appeals to courts are permitted in the first two cases, because the court would then be attempting to allocate materials or facilities without having the true facts of the case before it and without the benefit of knowing the War Production Board administrative determinations in general on these and related matters. Also the delay involved would be serious in many cases. For instance, in the case of many scarce materials, we allocate the entire supply every month. If a person who gets no allocation should contest the matter in court, it would often become moot before it could be heard or else the court would have to immobilize critically needed material while hearing the issues.

It would be difficult also, but less objectionable in the third case to have a court review of the suspension order by way of an appeal. The suspension orders are themselves a form of allocation and consistency with the general allocation policy of the War Production Board is imperative if we are to have general respect for and compliance with existing orders and rules of general application. It should be emphasized that to this end the recommendations by the compliance commissioner for suspension orders are reviewed before the orders are issued by the legal staff of the War Production Board to be certain that the proposed order is consistent with our allocation policy and also to be sure that we are acting within our own legal authority. The legal staff cannot increase the recommendation of the Compliance Commissioner. The party affected may then appeal to the Chief Compliance Commissioner who does have the right to increase or decrease the recommendations of the suspension order.

You will no doubt be interested in having the facts on our appeals which go before the Appeals Board and which, with very few exceptions, are the second type of appeal in the list I have given you. I have some statistics covering a period of 2 years from July 1, 1942, to July 30, 1944, and will also make reference to a sample week in the month of October 1944 as indicative of the current load.

From July 1, 1942 to June 30, 1944, the Appeals Board handled a total of 42,559 appeal actions. Of these, the Industry Divisions recommended a grant in 38,065 cases and the Appeals Board concurred by granting the requests in 36,701 cases, but did not concur and denied 1,081, the balance having been withdrawn or dismissed. Out of the above total of 42,559, the Industry Divisions recommended a denial in 4,145 cases and the Appeals Board concurred by denying 3,432 but did not concur and granted 599, the balance having been withdrawn or dismissed. Finally out of the 42,559 the Industry Divisions referred to the Appeals Board 349 cases as unresolved or certified, of which 176 were granted, 141 denied and 32 withdrawn or dismissed.

In the 1 week ending October 28, 1944, the War Production Board received 2,743 appeals which would be currently at the rate of 142,000 appeals a year. During that week, 266 cases were closed without formal action, and 1,190 appeals were granted. Of those granted, 26 were granted by the field offices, 954 by the Industry Divisions, and 210 by the Appeals Board.

Turning now for a moment to the question of the delegation of power: In certain fields, primarily concerned with the consumer supply, the War Production Board has delegated the allocation or rationing authority to other agencies that are better organized to administer than the War Production Board. For instance, if the War Production Board had been called upon to ration sugar or gasoline, it would have been compelled to set up thousands of offices all over the United States. That was one of the reasons that led the Board to the delegation of the powers which it originally made and which the President afterward made by Executive Orders in several cases.

That would have interfered and cluttered up our job. Our job is to press for war production, to get out supplies and let nothing stand in the way and to move as fast as possible.

Now these delegations include, for example, authority to the Office of Price Administration over automobiles, gasoline, and tire ration-

ing; to the Office of Defense Transportation, truck rationing. In addition, the Petroleum Administrator for War acts in a capacity similar to that of an industry division of the War Production Board in allocating material to the petroleum industry.

Also certain authority has been granted the Army and the Navy to assign preference ratings for deliveries in certain fields, and the President of course has, by Executive order, granted authority of a limited character in the food areas to the War Food Administrator.

I have a summary statement which describes the delegations of power made to other agencies, and with your permission, without going into detail, I will file it with the committee.

The CHAIRMAN. Without objection, the permission will be granted. (The statement referred to follows:)

STATEMENT BY JOHN LORD O'BRIAN ON DELEGATION OF POWERS TO OTHER AGENCIES BY THE CHAIRMAN OF THE WAR PRODUCTION BOARD UNDER TITLE III OF THE SECOND WAR POWERS ACT

Under the authority of Executive Order No. 9125, the Chairman of the War Production Board has delegated ration powers to the Office of Price Administration. By virtue of agreements entered into under the terms of Executive Order No. 9276 between the Chairman of the War Production Board and the Petroleum Administrator for War, dated December 11, 1942, and January 7, 1943, and supplemented by a later directive, the Petroleum Administrator for War was given authority to issue in his own name directives and orders concerning the allocation of petroleum and the use of materials by persons in the petroleum industry, but subject to the over-all policies and program determinations of the War Production Board. Under the terms of Executive Order No. 9332, an agreement was entered into on November 26, 1943, between the Chairman of the War Production Board and the Solid Fuels Administrator by which the Solid Fuels Administrator was given authority to issue, in his own name, directives and orders concerning the allocation of solid fuels, but subject to the over-all policies and program determinations by the War Production Board. By War Production Board Directive No. 33, he was later given authority to allocate coke intended for use by domestic consumers.

The Secretary of War and the Secretary of the Navy, through the Army and Navy Munitions Board, have received delegations of authority from the Chairman of the War Production Board to assign preference ratings for deliveries to designated Government agencies and their prime or subcontractors, and for certain types of construction (War Production Board Directive No. 31).

By directive No. 32, the Chairman of the War Production Board delegated authority to the United States Maritime Commission with respect to the assignment of preference ratings for inventory purposes. A number of other minor delegations have been made and some of the most recent ones are as follows: Authority was delegated to the Office of Defense Transportation to ration new commercial vehicles; a special preference rating authority for the procurement of containers for packing food was delegated to the War Food Administrator; and authority to exercise control over gasoline for civilian aircraft or aircraft engines was granted to the Administrator of Civil Aeronautics; authority for priorities action by the Veterans' Administration under a program determination by the requirements committee of the War Production Board was delegated to the Veterans' Administration.

Mr. O'BRIAN. Now, gentlemen, that is the general scheme under which we have been operating and are operating today.

This grant of power had to be made in the broad way in which it was made in order to secure results. Experience has demonstrated that. I need not emphasize that the operation of these powers is widespread in effect. It is commonly said that the orders affect the daily operation of a quarter of a million concerns. I cannot vouch for the

accuracy of that, but it is probably so. These orders every week affect hundreds of thousands of transactions of every kind in various fields.

I have outlined the areas that we have covered. I have tried to show that we have endeavored to exercise these powers wisely, so far as rules and regulations to control such materials and facilities in the prosecution of the war.

We have never made a technical objection to a court review of our orders or procedure, but it is somewhat of an extraordinary fact that although I have been associated with this agency and its predecessor for nearly 4 years as general counsel, there is no court injunction outstanding against any operation of the War Production Board. That is somewhat of an extraordinary, significant fact. The only court ruling that was adverse to us was that of a trial court that was confined to the facts of the particular case, but the courts never extended it to other cases, and that particular decision also was reversed as moot.

What I have in mind is specifically this: I think it is fair to infer from these facts that at least there has been no flagrant abuse of these great powers by the War Production Board or its predecessor. Beyond that I do not care to comment. This system, I think it is fair to say, is thoroughly understood by industry and by the people of the country. It is a wartime necessity. These procedures have all been evolved as the result of experience and with the simple over-all desire to maintain fair play insofar as it is possible under the conditions imposed upon us by the war.

There is the record, Mr. Chairman, and so far as we are concerned we would like very much, in what we conceive to be the public interest, to have this grant of authority extended for 1 year and in its present form.

Mr. HOBBS. Thank you very much. Are there any questions?

Mr. HANCOCK. You are fairly certain that these powers will cease December 31 unless extended by statute?

Mr. O'BRIAN. That is what the statute says.

Mr. HANCOCK. You do not take literally the statement of the Attorney General that the President has such powers under his war power?

Mr. O'BRIAN. I do not think the Attorney General ever said that, but I am certainly not going to argue with the Attorney General, Mr. Hancock. I do not know anything about that, and I do not think I want to get into a discussion of it, if you will forgive me. I am simply responsible, to some degree, as I have told you, for what we have been doing. I am simply the head of the legal staff, and all of these procedures have either been originated or set up pursuant to the advice of the legal staff. I think the Congress made a very broad grant of powers and that needs no comment, to the President, in this instance, and on the whole I think the powers have been used with restraint. At any rate, I know of no charge that any of them have been flagrantly abused.

Mr. HANCOCK. Are there any amendments you would suggest?

Mr. O'BRIAN. No. We would prefer to see the statute reenacted exactly as it stands, because any amendment of even a slight degree would introduce an element of trial and experiment and disturbance. Industry understands this statute and the people understand it, and

it is working well; at any rate, insofar as priorities and allocations are concerned, the exercise of these powers has succeeded in delivering these goods.

Mr. HOBBS. Any further questions?

Mr. SPRINGER. You say you have no objection to inserting the provision for judicial review?

Mr. O'BRIAN. We have never interposed any technical objection or any legal objection to it. Anybody can go into court and ask for an injunction to review an order if he chooses to do so. It does not require any provision of law to aid him in that respect.

Mr. SPRINGER. I know he could raise it by injunction but there is no provision under the law by which he can prosecute his appeal.

Mr. O'BRIAN. No.

Mr. SPRINGER. That is, from the determination of this five-man appeal board that you have in your department.

Mr. O'BRIAN. That is true, but as a practical matter there would not be any necessity for that, because I think in most cases a modification of the particular order is made granting the particular relief requested.

Mr. SPRINGER. Yes.

Mr. O'BRIAN. What I am trying to say is this: That from my own experience, which, of course, is simply with the Board, I know of no present demand anywhere for any court or judicial review. I think if it existed I would have heard of it, particularly if there is any real substantive demand for it, but I want to state that we have never objected to it—personally I do not believe in that anyway. We have always met the issue.

Mr. SPRINGER. And you would not have any objection to a provision being inserted in this bill providing for an appeal from a decision of the five-man Appeals Board in the department?

Mr. O'BRIAN. I think that would introduce a new element which might slow down the efficacy of the particular order; but I would not want to take a position without consulting the Board.

Mr. SPRINGER. But personally you would have no objection?

Mr. O'BRIAN. That is a matter of policy on which I think the Chairman and the administrative officials should be heard.

Mr. HOBBS. Are there any further questions?

Mr. O'BRIAN, we are very grateful to you for presenting the statement you have made, but we do not want you to understand that you are excused because I think it is highly probable we may want to ask you with reference to some other phases of the subject.

Mr. O'BRIAN. Yes.

Mr. HOBBS. I would like at this time to run through rapidly the titles of the act that are sought to be extended and see where we stand with regard to each.

TITLE I. EMERGENCY POWERS OF THE INTERSTATE COMMERCE COMMISSION OVER MOTOR AND WATER CARRIERS

Is there any objection, any opposition to the granting of the extension with respect to title I?

STATEMENT OF HON. JOHN L. ROGERS, MEMBER OF THE INTER-STATE COMMERCE COMMISSION

Mr. ROGERS. Mr. Chairman, my name is John L. Rogers; I am a member of the Interstate Commerce Commission. The Commission favors the extension.

Mr. HOBBS. Thank you. We appreciate your appearance.

Is there any objection to title I?

Mr. ROGERS, we do not know whether it will be developed here this morning or not, but there is objection along this line, at least there is criticism of the administration of the extension of the powers, at least the sentiment is to the effect that the Commission has failed to exercise the power which has been given and should be required to administer this section; that is, to exercise the powers granted under it. Have you had that reflected in any conferences you have had or with the Commission?

Mr. ROGERS. No. It should not be said that we have not exercised the power. We have exercised the power in nearly 5,000 cases during the last year, and somewhere in the neighborhood of 12,000 cases since the Second War Powers Act was enacted. I think I can safely say that we have met every transportation need, either by our armed forces or our civilian industry during the war period by the exercise of this authority.

There have been a few instances in which applicants who could not make out a valid case under the regular provisions of the Motor Carriers Act have sought relief under this blanket provision and in those cases they have been denied. In other words, it is my observation that in those cases they have sought relief under the general War Powers Act for something they could not get under regular procedure in which interested parties appear and are heard.

Mr. HOBBS. You do not think that the regulation of the motor carrier is so drastic that he requires relief from dislocations that are inevitable in wartime?

Mr. ROGERS. No. I think we have met each one of these needs. I have personally handled most of these cases, and say that we have met every single need that is related to the war effort up to this time.

Mr. HOBBS. Is there any person present who desires to register a protest against the extension of title I?

Would you be kind enough to file any extension of your statement with the clerk? The committee appreciates your appearance.

Mr. ROGERS. Yes.

TITLE II. ACQUISITION AND DISPOSITION OF PROPERTY

Mr. HOBBS. Now with reference to title II: Acquisition and disposition of property. Is there any objection to the extension of that title?

STATEMENT OF RICHARD L. MERRICK, OFFICE OF THE UNDER SECRETARY OF WAR

Mr. MERRICK. Mr. Chairman, I merely wish to say that the War Department is interested in that section as well as in titles 5 and 6. I know of no objection to the extension of title 2, 5, or title 6 and

we can conceive of no objection to them: unless the committee desires some explanation it would be agreeable to us not to make a statement. We have some representatives here who might be able to give the committee some information.

Mr. HOBBS. We appreciate your appearance, Mr. Merrick.

Mr. HANCOCK. Mr. Merrick, I notice that title 2 gives the Secretary of War and the Secretary of the Navy and others, not only the power to acquire property but to dispose of it in accordance with section 1 (b) of the act of July 2, 1940. I am wondering if that may not be in conflict with the bill recently passed providing for the disposition of surplus property. I have not looked into the question particularly myself.

Mr. MERRICK. I am not prepared to answer your question, Mr. Hancock, but I think we have a representative here from the Department who can give you the information; Major Gideon.

Mr. HANCOCK. There should not be any conflict.

STATEMENT OF MAJ. DAVID B. GIDEON, OFFICE OF THE CHIEF OF ENGINEERS, WAR DEPARTMENT

Major GIDEON. Mr. Chairman, I am Maj. David B. Gideon, in the office of the Chief of Engineers, War Department.

The disposal provision of the Second War Powers Act was originally drafted at a time when the Surplus Property Act had not been passed. However, it is our opinion that the extension of the Second War Powers Act will not conflict with the disposal powers contained in the Surplus Property Act. In the first place the disposal powers contained in the Second War Powers Act authorize disposals only in the interest of the national defense. On the other hand, when property is declared surplus under the Surplus Property Act it is reported to the Surplus Property Board because it is no longer required in the interest of national defense.

Furthermore, there is a provision in the Surplus Property Act which states that the act shall not impair existing disposal authorization. In other words, at the time the Surplus Property Act was passed the Second War Powers Act was already in effect, and the Congress was cognizant of the disposal authority conferred upon the Secretary of War at that time. The extension of this act, therefore, does not change the situation. Briefly, if any property is found surplus by the War Department, it would be reported to the Surplus Property Board, just as would be the case if the Second War Powers Act were not in existence.

Mr. HOBBS. Thank you. Are there any further questions?

Major GIDEON. I might add regarding the acquisition phase of the extension of this act that the War Department's original authority to acquire certain sites did not include special purpose facilities, nor did we have the authority to take personal property in connection therewith. From that standpoint also the War Department feels that the act should be extended.

Mr. HOBBS. It would not need to lead to any possible confusion?

Major GIDEON. No; I do not think so.

Mr. HANCOCK. Are you quite sure that the Surplus Property Act preserves the integrity of this act that we are discussing?

Major GIDEON. The provision which I was referring to in the Surplus Property Act is found on page 20 of Public Law 457, section 34 (A):

The authority conferred by this act is in addition to any authority conferred by any other law and shall not be subject to the provisions of any law inconsistent herewith. This act shall not impair or affect any authority for the disposition of property under any other law, except that the Board may prescribe regulations to govern any disposition * * *

In other words, at the time the Surplus Property Act was enacted, title 2 of the Second War Powers Act was in existence, and authorized certain disposals by the Secretary of War. Since section 34 (A) of the Surplus Property Act states that that act shall not impair existing disposal authority, the extension of the Second War Powers Act would not alter the situation.

Mr. HANCOCK. The Surplus Property Act contains a provision requiring that priority be given to municipalities when airports are disposed of when no longer needed.

Major GIDEON. That is right.

Mr. HANCOCK. Do you think it was the intent of the Congress that they should be taken over by the Surplus Property Board?

Major GIDEON. I believe when an airport is no longer required by the War Department it would be reported to the Surplus Property Board as surplus. In other words, the disposal would not be effected under the Second War Powers Act.

Mr. HANCOCK. You do not think that type of case would be covered by this title II?

Major GIDEON. No, sir. With the enactment of the Surplus War Property Act I can think of very few cases where the War Department would dispose of property. There might be property, in some instances, which it desires to lease in a standby condition, and under those circumstances the extension of this act would give us that authority, but I can conceive of few situations—very few situations—where the War Department would dispose of property in aid of the national defense rather than as surplus under the Surplus Property Act.

Mr. HANCOCK. The Surplus Property Act also provides for the leasing of property, and it is my thought—and in fact, that was the purpose of my amendment—to require that the airports which had been built, ought to be retained by the Government; at least, they should not be destroyed, broken up into farms or lots, but should be used for public purposes, with the right in the Government to reacquire them whenever necessary and they ought to be made available to municipalities under leases.

Major GIDEON. I believe that could be done under existing authority.

Mr. HANCOCK. How could the War Department do it?

Major GIDEON. Well, that could be done under the Second War Powers Act. You also have authority under separate statute for leasing for not to exceed 5 years; but this act would authorize the leasing of such airports.

Mr. HOBBS. Mr. Merrick, you say that your attitude applies also to title what?

Mr. MERRICK. Titles 5 and 6.

Mr. HOBBS. Is there any objection to the extension of titles 5 and 6? What about title 4? Any objection to the extension of that power—purchase by Federal Reserve banks of Government obligations?

Then, is there any objection to title 7—political activity. Any objection to the extension of title 7?

Is there anyone who cares to be heard in objection to title 9, to extend the free postage for soldiers, sailors, and marines, with the understanding that we have to resolve that problem that may exist between this and the postage bill?

Is there any objection to the extension of title 11—acceptance of conditional gifts to further war program?

Is there any objection to title 14—utilization of vital war information?

Mr. HANCOCK. Is there any reason why title 12 should not be repealed? The white pennies are a nuisance, and so far as I know that is all they have done under title 12, but I think the white penny is a nuisance.

Mr. HOBBS. They have resulted in saving several tons of copper.

Mr. HANCOCK. They have gone out of circulation have they not?

Mr. HOBBS. Well, this is going to expire on December 31, is it not?

Mr. HANCOCK. No; but its terms expire in 1946.

Mr. HOBBS. It does?

Mr. HANCOCK. Yes; on December 31, 1946.

Mr. HOBBS. Yes.

Mr. HANCOCK. I do not think there was ever any good reason for that title.

Mr. HOBBS. Well, we held hearings right in this committee room, as you will recall, and it was considered to be important to save copper at that time.

Mr. HANCOCK. I think we ought to have a report to find out if it is necessary now.

Mr. ROBSON. As I remember, and of course, you do know about it, the real reason for it aside from saving copper, was that it would disrupt the vending machines, the nickel vending machines and penny vending machines to put nickels in the machines if we had to handle it any other way except the way we did, but I hope you will look into it. We will be glad if you will do so.

Mr. HOBBS. All right, then, it seems to have come down to possible opposition to only two titles, and we will be glad to have anyone list their opposition to the extension of title III, to give us their names and the organization for which they appear, if any, and signify their desire to be heard. Is there anyone here who desires to oppose the extension of title III?

We would like to have Mr. O'Brien bring in any representatives of the O. D. T. whom he cares to request to be here. Is there an O. D. T. man here?

Mr. RODDEWIG. Yes; I am general counsel of the O. D. T.

Mr. HOBBS. Are there any representatives from the O. P. A. here?

Mr. FIELD. I am general counsel of O. P. A.

Mr. HOBBS. As to any of the agencies involved in title III we would like to have them remain for any questions that the committee or others desire to ask. Is there anyone here who desires to be heard on any part of the bill, in opposition to it? If not, then, the hearings will stand adjourned, so far as everything is concerned except the interrogation of

such witnesses as the committee may decide to call, and we are very grateful to you all for your presence, and for your proffered aid, and we will now go into executive session.

Mr. HODGSON. My name is Patrick Hodgson, Office of the General Counsel of the Navy Department. I should not like silence on the part of the Navy Department to indicate that we are indifferent to the extension of this statute. We are particularly interested in its extension. Thank you, sir.

Mr. HOBBS. Thank you very much. I took it that that would be the attitude of all who are affected by it. We were not taking the position that silence gave consent to killing the bill. Is there anyone here from the Treasury Department?

Mr. RANTA. Hugo Ranta of the general counsel's office.

Mr. RANTA. We are particularly interested in title XI.

Mr. HANCOCK. How about title XII, that coining provision? That provision does not expire until December 31, 1946. However, I should like to find out the attitude with respect to its elimination.

Mr. RANTA. We will look into it.

Mr. HANCOCK. I would like to know what use is made of it.

Mr. RANTA. Some coinage has been done under that title.

Mr. SPRINGER. All of the coinage has been discontinued under that title at this time, has it not?

Mr. HANCOCK. Did you change the alloy of the 5-cent pieces? I know you put out white pennies. They are a tremendous nuisance to everybody. You do not make them any more, do you?

Mr. RANTA. I am not an expert on coinage, but the coinage of those pennies has been discontinued. These pennies are not being made any more.

Mr. HANCOCK. And you did not change the 5-cent piece at all, did you?

Mr. RANTA. That I do not know.

(The matter referred to is as follows:)

TREASURY DEPARTMENT,

Washington, D. C., November 21, 1944.

HON. HATTON W. SUMNEES,

Chairman, Committee on the Judiciary,

House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: It is my understanding that during the course of the hearings on H. R. 4993, relating to an extension of certain expiring titles of the Second War Powers Act, members of the subcommittee desired information with respect to minting operations under title XII of the act.

Title XII of the Second War Powers Act authorized the coining of a 5-cent piece with a metallic content of one-half silver and one-half copper, with a further provision that the proportion of silver and copper could be varied and new metals added if such action was in the public interest. Section 3515 of the Revised Statutes (U. S. C., title 31, sec. 317) previously had required that the 5-cent piece be composed of three-fourths copper and one-fourth nickel. The war effort brought about a shortage of nickel and copper and the legislation was passed to permit a change in the content of 5-cent pieces so that a portion of the nickel and copper previously used in coinage could be diverted to the production of war materials.

After intensive research, the content of the new 5-cent piece was established at 35 percent silver, 56 percent copper, and 9 percent manganese. That formula was adopted after taking into consideration various factors including the durability of the alloy, the availability of critical materials, and the electrical and magnetic properties of the coin so that it would successfully operate all types of telephone coin boxes, fare boxes, and vending machines. The change resulted in the elimination of the use of nickel and a 25 percent saving in the amount of copper previously used in the coinage of 5-cent pieces.

The coining of the new 5-cent piece was begun in October 1942. Since that time 597,238,600 of the coins have been struck. Of that figure, 115,919,000 have been struck during the present year. Since commencing the manufacture of the 5-cent coin, approximately 1,645,825 pounds of nickel and 1,250,825 pounds of copper have been saved due to the change in the metallic content. In view of that saving, the existence of the authority under title XII, which does not expire until December 31, 1946, is considered highly desirable by this Department.

Very truly yours,

D. W. BELL,

Acting Secretary of the Treasury.

MR. HOBBS. If there is nothing coming up on the floor of particular moment this afternoon, may we come back at 2:30?

MR. NUTTING. My name is Charles Nutting, associate solicitor of the War Food Administration. May I inquire if you wish a representative of the War Food Administration to be present this afternoon?

MR. HOBBS. So far as I know there will be no necessity for your appearance. Does anyone desire to ask him any questions or anything relating to the War Food Administration? No, sir; that will be all right, sir.

MR. NUTTING. Thank you, sir.

MR. HOBBS. We will go into executive session with the representatives of the O. D. T., the O. P. A. and others this afternoon. We will meet at 2:30 this afternoon.

I submit for the record a letter written me by Dr. James C. Nelson, with regard to certain provisions of the Second War Powers Act:

GARBETT PARK, MD., November 17, 1944.

HON. SAM HOBBS,

Chairman, Subcommittee of the

House Committee on the Judiciary, House of Representatives.

MY DEAR MR. HOBBS: As I indicated yesterday in our telephone conversation, I am acting as a private citizen, and as the author, in calling to your attention the summary report of the Board of Investigation and Research on the subject on Federal Regulatory Restrictions upon Motor and Water Carriers, Seventy-eighth Congress, second session, House Document No. 637. Unfortunately, that agency expired on September 18, 1944, and exists no longer to take action on such matters as the extension of the Second War Powers Act, 1942. It is for this reason, and as a former Assistant Director of Research for the Board of Investigation and Research, that I called you by telephone to inquire whether the recommendations of this report had been called to the attention of the committee.

The recommendation which relates to extension of the Second War Powers Act is to be found on page 1 of the cited summary report, a copy of which is enclosed. Simply stated, this recommendation states that it would be desirable, at the time the Second War Powers Act is extended, for the Congress to continue that provision of this act which permits the Interstate Commerce Commission to suspend any certificate or permit, or condition or restriction therein, which has been granted to an interstate motor carrier of property and to amend that provision so as to provide a legislative directive requiring the Commission to suspend all limitations upon the operating authority of interstate motor carriers of property which result in uneconomical and wasteful use of motor vehicles, tires, and manpower during the war. The present emergency provision (sec. 204 (f) of the Interstate Commerce Act) is merely permissive.

The summary report, which is a 5-percent condensation of the underlying report, describes the salient restrictions that have developed upon motor-carrier operations under the Motor Carrier Act and their effects upon efficiency of use of equipment and strategic materials. Section VI on War Measures To Eliminate Waste From Regulatory Restrictions is especially pertinent. The report finds that although 62 percent of the interstate motor carriers of property have been limited to hauling specified commodities and 40 percent of these limited carriers, most of which are common carriers, have been restricted to hauling one commodity or commodity class, such regulatory barriers to full loads in both di-

rections have not generally been suspended or eliminated in the interest of the war effort. It also finds that a large number of interstate motor carriers of property have been restricted from accepting return loads in their own names for compensation or from serving the intermediate points through which their trucks pass in going to their destinations or returning to their home bases. These types of wasteful restrictions have also not been generally suspended in order to free truckers to give the maximum service to shippers and commodities in this time of transportation shortage and to arrange to obtain full loads in each direction of movement. The study also shows that numerous carriers are not permitted to interchange traffic with themselves; that is to say, a carrier may be permitted to haul a commodity from A to B and from B to C but be restricted from hauling the same commodity from A to C. Moreover, except to the extent that circuitous movement is prohibited by the Office of Defense Transportation emergency orders, interstate truckers over regular routes frequently are not permitted to operate their trucks on the shortest available highway routes.

That certificate and permit restrictions upon commodities, return hauls, intermediate points, off-route points, shippers, and origin and destination areas stand in the way of maximum service with existing equipment and the fullest elimination of excess mileage and partial loading is attested to by the fact, noted on page 13 of the summary report, that it has been necessary for the Interstate Commerce Commission to grant approximately 10,000 temporary operating authorities since the war began. These have relaxed the restrictions that were standing in the way of serving war-important points or commodities in these individual cases, to be sure, but sample studies of temporary authorities show that they tend to be granted primarily to the larger carriers—the precise ones which most frequently have general commodity authority and adequate operating authority in other respects for an economical operation and a complete service. In other words, the larger carriers, who have pressed their cases, have been permitted to expand to serve newly important points or to haul war commodities, but the much larger number of smaller carriers which in the aggregate are responsible for approximately half of the tonnage by intercity interstate motor carriers of property, have been left to get along as best they could under their tight restrictions. Such carriers often cannot afford to pursue their legal remedies, do not know how to obtain relief from the Interstate Commerce Commission, or are easily discouraged by the legal procedures involved and by the opposition of large carriers.

The result has been that hundreds of the smaller carriers, especially those operating irregular routes, have suspended operations altogether and many other hundreds have continued uneconomical and wasteful operations. To avoid these results, which are in conflict with the war need for maximum conservation of equipment, manpower and tires, the Government, through the Office of Defense Transportation, has sponsored an elaborate field organization to encourage leasing of empty trucks by their owners to a relatively few large carriers having excess traffic, in part because they possess adequate operating authority. It is an open secret in the transportation industry, however, that intercarrier trip leasing has avoided only a small part of the wastes forced upon motor-freight carriers by their regulatory restrictions, and the above-cited report so finds.

As the research director and principal author of this report, I was very reluctant to conclude that a legislative directive by the Congress would be necessary to solve the problem, and I know that the Board felt the same way. However, this Nation has been at war for 3 years but remedial action of a general character has not yet been taken. For this reason, it appears that action by the Congress is now necessary.

I regret that the detailed underlying report of 600 pages, including 65 tables, some charts, complete explanations of method and concepts, and the whole analysis, is not yet published and is only available in two typewritten copies, one at each of the Interstate Commerce Committees. I understand, however, that these copies may be referred to there.

I wish to reiterate that I am writing to call this problem and report to your attention as a private citizen, not as a representative of the Office of Defense Transportation, where I am employed at present. The comments made herein are entirely based upon work at the Board of Investigation and Research prior to joining the Office of Defense Transportation.

Very truly yours,

JAMES C. NELSON.

(Thereupon the committee proceeded to consideration of other business.)

TO AMEND AND EXTEND THE SECOND WAR POWERS ACT, 1942

WEDNESDAY, NOVEMBER 22, 1944

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met at 11:15 a. m., Hon. Hatton W. Summers (chairman) presiding.

The CHAIRMAN. Proceed, gentlemen.

STATEMENT OF AARON L. FORD, GENERAL COUNSEL, SELECT COMMITTEE OF THE HOUSE OF REPRESENTATIVES TO INVESTIGATE ACTS OF EXECUTIVE AGENCIES WHICH EXCEED THEIR AUTHORITY

(Mr. Ford appeared at the request of the committee.)

Mr. FORD. The Second War Powers Act confers tremendous power on the President and further provides by section 301, subsection 8, that he may delegate his authority to any officer or agency of the Government.

He has delegated his authority to the War Production Board, and by an order signed jointly by the Administrator of the W. P. B. and the President the W. P. B. delegated certain rationing powers to the Office of Price Administration; the President has also delegated some of the authority conferred upon him by the act to the War Food Administration, Petroleum Administration for War, and others.

Mr. MICHENER. O. D. T.?

Mr. FORD. Yes; O. D. T. We investigated the power to suspend as well as the suspension orders of W. P. B., O. P. A., W. F. A., and P. A. W.

When we first started our investigation on this matter, and when we held hearings in December 1943, Mr. John Lord O'Brian, general counsel of W. P. B., testified that W. P. B. had a manual of their internal procedure and that prior to June 1943 and I don't know why it was changed, except for the reason that a good many lawsuits were being brought against his agency which provided as follows [reading]:

It is provided that violations of orders and regulations of the War Production Board may be punished by the imposition of the administrative penalties or the institution of civil or criminal proceedings.

At that time the War Production Board called them administrative penalties. That agency was bound to recognize from its own

manual of internal procedure that the imposition of the suspension order constituted a penalty, but when lawsuits began to appear the War Production Board changed their manual and began to call them "administrative sanctions."

Mr. JENNINGS. Mr. Ford, doesn't it get down to whether Congress intends to write the laws and the provisions or whether we will sit supinely by and let some administrative agency in its love of power override the statutes of Congress in its methods of procedure and infliction of penalties?

Mr. FORD. That is a question of policy for the Congress to determine.

Mr. JENNINGS. Beyond the meaning and scope and intent of the act. That is the question that I see here.

Mr. FORD. Someone told me that the suit of the Simon Hardware Co., a California corporation, brought in the District Court for the District of Columbia, had been referred to by a witness. In that case the Court of Appeals for the District of Columbia held that the suspension order having expired before the case was decided, the question before the court became moot and they declined to pass upon it.

Mr. CELLER. There are a lot of restaurants of course in New York. In a number of instances they have come to me and they say "Why can't we do something to buy our peace without going into court, to save a plea of guilt, or to save expense by way of enjoining an agency itself? Why can't we make some settlement?"

I have a number of cases like that.

The various regional offices act along those lines.

Do you think that has given rise to the practice that has developed here to arrange something whereby there can be some sort of intermediate tribunal to obviate the expense and so forth?

Have you found that at all?

Mr. FORD. Yes, we have.

Mr. CELLER. By suspension for periods?

Mr. FORD. Yes.

Mr. CELLER. I have had those cases myself.

Mr. FORD. When we went into these matters in December of 1943 they had a total of four-hundred-and-thirty-some-odd suspension orders, and I found in the Federal Register of November 21, this year, where they suspended Mark Stone Manufacturing Co. to be effective until February 17, 1945, about 48 days after the Second War Powers Act expires.

I don't know where they got their authority for doing that.

Mr. CELLER. They have no authority.

Mr. FORD. But they are doing it regardless of their authority.

As I previously stated, this power having been delegated by the President; in one case, the Petroleum Administration for War issued an order that all filling stations in certain sections of the country had to operate so many hours a day.

Where they got the authority to tell a filling station owner he had to operate so many hours a day, I don't know.

But following that order they hailed a fellow by the name of Mr. Ford L. Wright somewhere in one of the Western States, Nebraska I think, suspending him from doing business, notifying all the people

that he was purchasing gasoline from that they could not supply him with gasoline because he had violated an order of the Petroleum Administration for War in that he failed to close his filling station so many hours per day.

The testimony showed that this man lived in the suburbs of the city and his residence was a part of his filling station; he had a good many cross-country trucks that stopped at his place and he had to serve them at different hours of the night, and because he didn't obey the closing-down order they suspended him and cut off his gasoline supply and forced him to close his business.

I cannot find any authority that gives the President or his delegatee the power to tell any person how many hours a day he can operate his filling station.

MR. CELLER. In another case in New York a man attempted an appeal and they would delay and delay and delay and in that way practically forestall in his right to appeal, because in his case the man would be paying rent, he would try to keep his manpower together, and eventually his appeal meant nothing because he was practically out of business, his goodwill was destroyed.

Have you had any cases of that sort?

MR. FORD. We have investigated many cases. I presume you refer to the Emergency Price Control Act.

We went down to the War Production Board and other agencies which I have mentioned and went through the cases at random. We picked out some 12 or 15 cases; and out of that 12 or 15 we found examples that Representative Smith has pointed out to you and that I have just spoken of in the *Ford L. Wright case*. There are other cases, but I will not go into them unless the committee wants me to.

The War Food Administration, when it started out on its suspension order—first, let me tell you that the slaughterers of the country are required to have a license—would, where they thought the terms of the license had been violated, wire the licensee and tell him he had been suspended from doing business without giving him an opportunity to be heard.

They started out on that procedure, but I think now they give the man an opportunity to be heard.

THE CHAIRMAN. I just want to get to that point right now.

You have covered these stages of violation in these agencies. Do you think there is anything necessary for you to state to give us the picture of what has taken place?

MR. FORD. Our investigation naturally had to be limited. We haven't gone into the whole picture.

Judge Smith has pointed out to you that it appeared in the beginning of our investigation that certain agencies were exercising authority that Congress did not confer upon them.

The Supreme Court said in the case of *L. P. Steuart & Bros., Inc. v. Bowles et al.*, 322 U. S. 398, and of course that forecloses the question from the legal standpoint—that the power to allocate gives them also the power to suspend.

THE CHAIRMAN. Now then, we have the picture as to the practice, then we have the determination of the Supreme Court. Have you got that picture?

MR. FORD. Yes.

The CHAIRMAN. Now, my question was, Do you think there is anything else you could bring to us out of your experience that would add to the picture? Because we must get down to the point just indicated by the question.

Mr. FORD. No, sir; I think that covers the whole thing.

The CHAIRMAN. All right. Now then, from your examination both of the facts and the prefaces and the authority and decisions, did your committee arrive at any conclusion as to what sort of legislation and amendment to the Second War Powers Act might be put over, might be helpful to put over?

Mr. FORD. Mr. Chairman, the Select Committee of the House to Investigate Executive Agencies recommended many amendments to the Emergency Price Control Act, of course knowing at the time that some of them were not germane to that Act.

I might point out that the amendment which the committee thought at the time would correct the situation appears on page 24 of the Select Committee's fifth intermediate report, section 401.

If the War Production Board thinks it is necessary then this committee could go further than we recommended and give the President the right to license people and the right to suspend. The applicable provisions of the Emergency Price Control Act, section 205 F, could very well fit into this situation.

The CHAIRMAN. That is they could not suspend until there was a hearing?

Mr. FORD. Until there was a hearing by a duly constituted court.

The CHAIRMAN. Did you state what you thought ought to be done in the proposed specific amendment?

Mr. FORD. The committee embodied the thing they thought ought to be done at the time. We covered that phase of it but we did not recommend the provision contained in the Emergency Price Control Act which I have referred to, the licensing provision.

The CHAIRMAN. Let me get this straight. The recommendations which you made prior to the decision of the court would not be adequate in your judgment—would it not be adequate, in your judgment—to remedy the situation as the situation has been modified by this decision of the Supreme Court?

Mr. FORD. Yes. The provision that we recommended would be sufficient, coupled with the applicable provision of the Emergency Price Control Act, section 205 (f). That would cover the entire thing, in my opinion.

The CHAIRMAN. I think it would be helpful if you would read it into the record.

Mr. FORD. I will be glad to.

It is contained in title IV on page 24 of the Fifth Intermediate Report of the Select Committee to Investigate Executive Agencies, House Report No. 1366 of the Seventy-eighth Congress, second session. [Reading:]

SECTION 401. Nothing in this Act or in any other law shall be construed as giving any Federal official the right to inflict or impose penalties, sanctions, or suspension orders of any kind, remedial or otherwise, not both specified by statute and expressly delegated to such agency by lawful authority.

Mr. CELLER. That is a matter of penalty. That doesn't cover the question of the right to a hearing before suspension.

Mr. FORD. It takes away the right to suspend. And if you go further and incorporate the applicable part of section 205 (f) of the Emergency Price Control Act, that will make it complete, in my judgment.

Mr. JENNINGS. That would take out the feature of the law as it then was which led the Supreme Court to hold that the power to allocate gave by implication the power to suspend.

Of course, Congress never intended that, but that is evidently the basis of the holding.

Mr. HANCOCK. Mr. Ford, shouldn't there be a third provision: "The right to suspend shall not rest with the same authority that has the right to give the license"?

Mr. FORD. The suggestion which I read incorporated with the applicable part of subsection (f) of section 205 of the Emergency Price Control Act will take care of the situation, in my opinion.

And if you will incorporate those provisions, it would prohibit the right of suspension except by a court.

Mr. GWYNNE. That would be for all violations?

Mr. FORD. Yes. In all matters pertaining to rationing and the Emergency Price Control Act has the proper provision regarding prices.

Mr. GWYNNE. Why isn't that enough? Then if a man violates the law they can prosecute him in court.

Mr. WALTER. And there is the right to injunction.

Mr. HANCOCK. I think a lot of businessmen want that; they suggest that.

In some cases they have to travel long distances; they would rather have it settled in some way rather than penalties.

Mr. JENNINGS. I know personally of cases down in my section where these fellows who administer this man-made law without any restrictions or due processes that the court follows, one flagrant violator down there habitually violates the law and no one has ever done anything about it.

Mr. GWYNNE. Is that in Tennessee?

Mr. JENNINGS. Yes. Other fellows, they come along and take them by the nape of the neck and yank them out of their places of business, lock the door, and shut them up.

Mr. HOBBS. Judge, you don't mean to admit here publicly that anybody in Tennessee ever violated the law?

Mr. JENNINGS. I didn't get the question.

Mr. HOBBS. You don't mean to admit here that anybody in Tennessee ever violated the law?

Mr. JENNINGS. Oh, once in a while, they are human.

Mr. BRYSON. They don't do it intentionally, do they?

Mr. JENNINGS. Oh, yes; they do.

Mr. FORD. Mr. Chairman, there is one other thing that should be brought to the attention of the committee and that is this: Mr. John Lord O'Brian contended before our committee that where an agency is doing something, even though it doesn't have the power to do it under the statute, and what it is doing is brought to the attention of Congress, and Congress reenacts the law without change, it amounts to a ratification, and then gives them right to go ahead and do what they have been doing even though the statute is silent regarding their acts.

Mr. WALTER. The Supreme Court decision corrects the procedure.

Mr. HANCOCK. Mr. Ford, you don't mean to say you agree on that with Mr. O'Brian?

Mr. FORD. There are some Court decisions that sustain the viewpoint of Mr. O'Brian.

Mr. JENNINGS. What they need is a curb bit. They need to be hog-tied.

Mr. HOBBS. I imagine that we cannot overlook the fact that this power as broad as the universe was voted by this committee and adopted by the Congress solely for one purpose and that was to win the war, and where you had only a certain amount of materials somehow somewhere someone should say that it should be conserved for national defense; and that is the theory upon which this bill was drawn and theory upon which it was passed hinged right there; and that theory is one that we should not allow ourselves to overlook, and it is a good one if it is honestly interpreted.

We had to commit to some agency with more than ordinary power, plenary power or summary execution of this power over the strategic war material for war purposes and of course any abuse of that power should be curbed and curbed strongly; but we ought not to be unmindful of the salutary purpose and the patriotic purpose for which this legislation was drawn and passed.

I believe we can do so, possibly, without hamstringing the administrative agency and without killing the effectiveness of the power.

Mr. CRAVENS. Mr. Chairman, I suggest if Mr. Ford is willing to do it he can prepare that amendment for us.

Mr. FORD. I will be glad to, Mr. Cravens. I will ask the reporter to incorporate the amendment at this point in the record of the hearings. The amendment reads as follows:

(1) Whenever in the judgment of the President such action is necessary or proper in order to effectuate the purposes of this Act and to assure compliance with and provide for the effective enforcement of any regulation or order issued under the provisions of title 3, Public Law Numbered 507, Seventy-seventh Congress, second session (56 Stat. 176), or under the applicable provisions of the Act of June 28, 1940 (54 Stat. 676), the Act of May 31, 1941 (56 Stat. 236), or under the provisions of this Act, he may by regulation or order issue to or require of any person or persons subject to such regulation or order, a license as a condition of using, manufacturing, or selling any commodity or commodities with respect to which such regulation or order is applicable. It shall not be necessary for the President to issue a separate license for each commodity or for each regulation or order with respect to which a license is required. No such license shall contain any provision which could not be required or prescribed by a regulation or order under the provisions of this Act or the Acts referred to in this paragraph: *Provided*, That no such license may be required as a condition of selling or distributing (except as waste or scrap) newspapers, periodicals, books, or other printed or written material, or motion pictures, or as a condition of selling radio time: *Provided further*, That no license may be required of any farmer as a condition of selling any agricultural commodity produced by him, and no license may be required of any fishermen as a condition of selling any fishery commodity caught or taken by him: *Provided further*, That in any case in which such a license is required of any person, the President shall not have power to deny to such person a license to use, manufacture, or sell any commodity or commodities, unless such person already has such a license to use, manufacture, or sell such commodity or commodities, or unless there is in effect under paragraph (2) of this subsection with respect to such person an order of suspension of a previous license to the extent that such previous license authorized such person to use, manufacture, or sell such commodity or commodities.

(2) Whenever in the judgment of the President a person has violated any of the provisions of a license issued under the provisions of this subsection

or has violated any of the provisions of any regulation or order issued pursuant to the provisions of this Act or the Acts mentioned in paragraph (1) of this subsection, a warning notice shall be sent by registered mail to such person. If the President has reason to believe that such person has again violated any of the provisions of such license, regulation, or order after receipt of such warning notice, the President may petition any State or Territorial court of competent jurisdiction, or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. If any such court finds that such person has violated any of the provisions of such license, regulation, or order after the receipt of the warning notice, such court shall issue an order suspending the license to the extent that it authorizes such person to manufacture or sell the commodity or commodities in connection with which the violation occurred or to the extent that it authorizes such person to manufacture or sell any commodity or commodities with respect to which a regulation or order issued under the provisions of this Act or the Acts mentioned in paragraph (1) of this subsection are applicable; but no such suspension shall be for a period of more than twelve months. For the purpose of this subsection, any such proceedings for the suspension of a license may be brought in a district court if the licensee is doing business in more than one State, or if his gross sales exceed \$100,000 per annum. Within thirty days after the entry of the judgment or order of any court either suspending a license, or dismissing or denying in whole or in part the President's petition for suspension, an appeal may be taken from such judgment or order in like manner as an appeal may be taken in other cases from a judgment or order of a State, Territorial, or district court, as the case may be. Upon good cause shown, any such order of suspension may be stayed by the appropriate court or any judge thereof in accordance with the applicable practice; and upon written stipulation of the parties to the proceeding for suspension, approved by the trial court, any such order of suspension may be modified, and the license which has been suspended may be restored, upon such terms and conditions as the court shall find reasonable. Any such order of suspension shall be affirmed by the appropriate appellate court if, under the applicable rules of law, the evidence in the record supports a finding that there has been a violation of any provision of such license, regulation, or order after receipt of such warning notice. No proceedings for suspension of a license, and no such suspension, shall confer any immunity from any other provisions of this Act.

(3) Nothing in this Act or in any of the Acts mentioned in paragraph (1) of this subsection or in any other law shall be construed as giving the President or any Federal agency, official, or employee the right to inflict or impose penalties, sanctions, or suspension orders of any kind, remedial or otherwise, not both specified by statute and expressly delegated to such agency or person by lawful authority.

MR. HOBBS. I don't mean, for one minute, we do not welcome any aid that Mr. Ford or Judge Smith or anyone else can give us, but here is the act that we are working on here, and I would just like to ask Judge Smith and Mr. Ford that if in their opinion—whether or not an amendment of this section would not reach both this power and also the subordinate power which was delegated to O. P. A. originally by W. P. B. or its predecessor.

It seems to me possible that this act, the Second War Powers Act, is the fountainhead and the source of the power of O. P. A.

MR. FORD. Yes; it deals with all rationing power, regardless of the agency administering it.

MR. HOBBS. Yes.

MR. FORD. The Second War Powers Act, the act now before this committee, only deals with rationing and does not deal with price control.

MR. HOBBS. Now, for instance, if we would provide here—

Provided, however, That no sanction or other restrictive order of any kind should be issued until an adjudication of guilt, in which proceeding the burden of proof is upon the agency——

Mr. HANCOCK. Do you think action can be speedy enough? I agree with you on this but I wonder if actions could be speedy enough.

Mr. HOBBS. Injunctive relief is supposed to be, next to prohibition, the speediest known to the law.

Mr. HANCOCK. You have got to travel long distances.

Mr. ROBSION. Not necessarily.

Mr. HOBBS. But I wanted to ask you gentlemen who have investigated this thing, and for whom we have a very high regard, if that is not true, that the limited provision of this act would also affect the O. P. A., even though it has a special act?

Mr. FORD. It would in regard to suspension orders on rationed commodities.

Mr. SMITH. Oh, yes. Because all of its rationing powers come from this act.

Mr. HOBBS. Not only from this act but that particular sentence.

Mr. SMITH. Yes.

Mr. MICHENER. The President himself has the power to allocate.

Mr. SMITH. By virtue of the provisions of title III, subsection 8, of the Second War Powers Act, the President has the power to delegate the authority which Congress gave him. He has divided the powers up and delegated them to different agencies.

The CHAIRMAN. Gentlemen, may I make a suggestion? I believe, unless some other member of the committee has some exploration to make, we have pretty well gotten the picture and the result of the investigation of the Smith committee. These questions that we are discussing we can discuss among ourselves.

Mr. Wasielewski is here, isn't he?

Mr. HOBBS. Mr. Chairman, wouldn't it be well to hear from the War Production Board on this matter?

The CHAIRMAN. Have you got somebody here?

Mr. HOBBS. Yes.

The CHAIRMAN. Yes, sir.

Mr. SMITH. May I add one other word?

The CHAIRMAN. Anything you think would be helpful to us.

**STATEMENT OF HON. HOWARD W. SMITH, A MEMBER OF CONGRESS
FROM THE STATE OF VIRGINIA, CHAIRMAN OF THE SPECIAL
COMMITTEE TO INVESTIGATE EXECUTIVE AGENCIES**

(Appearing by request of committee.)

Mr. SMITH. I made my statement before the shorthand reporter got here, and I am fully impressed with the statement which Judge Hobbs made about the necessity for rather broad powers in order to enforce this emergency action, and I am sure that none of us want to do anything that is going to prevent the enforcement of the rationing powers along proper channels.

Now, whether this particular amendment that we propose to the O. P. A. Act is too broad and would handicap the administration of the

act, I think that is a matter of policy that you gentlemen on the committee will have to determine for yourselves, but it is just a question what you can do to restrict unauthorized powers without handicapping the administration of this vitally important act.

Mr. RUSSELL. May I interrupt?

The CHAIRMAN. Yes.

Mr. RUSSELL. Judge Smith, you have studied the question. What is your individual opinion as to whether or not it would hamstring the necessary powers?

Mr. SMITH. Well, I will have to give you a rather broad answer to that.

I had hoped that these agencies when we went into this investigation would be willing to sit around the table and have pointed out to them these extreme things that they have been doing and that we could work out something that would remedy the situation.

We found that impossible, because we never found any agency that was willing to admit under any circumstances they had ever done anything that was wrong.

And so the amendment Mr. Ford mentioned was proposed and we recommended it in our report.

I am not thoroughly convinced myself without hearing from the agencies that it might not in some respect handicap their activities. Do you want to hear from the agencies and see if they won't suggest something that will bring them back within the scope of our system of government? The amendment we proposed on page 24 of the fifth report of the Select Committee to Investigate Executive Agencies may not be the answer to the problem but I hope this committee will be able to work out something to correct the situation.

Now, may I just add one word—I am afraid I have taken up so much of the time of the committee, but I never come before such a distinguished audience very often and I like to take advantage of it.

But the select committee, of which I have the honor of being chairman, has a bill before you which we recommended in our sixth report and it parallels very much the bills that you have been considering but it adds this feature:

We propose to separate the prosecuting powers from the judicial powers and to set up a separate agency of hearing commissioners who will not be in the employ of the very agency that is prosecuting the case.

Now, if your committee would give us the opportunity at some time to be heard on that, we would be very glad to.

The CHAIRMAN. We will be very glad to discuss it at another time. Thank you very much, each of you gentlemen.

Mr. HOBBS. The O. P. A. and the W. P. B. both have representatives here, and I think while we are on this subject we ought to give them an opportunity to be heard.

Mr. Staples, you or anybody else who care to speak for the agencies, I suggest that they be invited to talk.

The CHAIRMAN. Give your name, please.

STATEMENT OF LAURENCE M. LOMBARD, ASSISTANT GENERAL
COUNSEL, WAR PRODUCTION BOARD

Mr. LOMBARD. My name is Laurence M. Lombard.

The CHAIRMAN. Your capacity?

Mr. LOMBARD. Assistant general counsel, War Production Board, and Mr. Loring Staples, who is with me is also War Production Board assistant general counsel.

I don't know of anybody who is here from the O. P. A. on this.

As has been indicated, the power that you are talking about is a very broad power.

The so-called sanctions have been exercised as a form of allocation, and they have been upheld by the court.

Now, to pass any legislation which broadly prohibits sanctions of any nature would, I think, definitely interfere with the exercise of the allocation power: When Mr. O'Brian spoke before your subcommittee—he covered the whole picture of the set-up within the War Production Board and how it had exercised its powers, and did not direct his attention specifically at the suspension order which has been criticized here. I think it would be helpful to you if we called Mr. O'Brian and arranged for him to come before your committee, either right away or at a time you wish to set, to describe our suspension-order procedure. That was gone into before the Smith committee, and the committee in its various reports made no criticism of the War Production Board procedures. We can only speak of the War Production Board and not of the other agencies; but when the picture is explained as to the necessity of this type of action and that the suspension-order procedure and the hearings before compliance commissioners grew up as a method of safeguarding the right of the individual who was charged with a violation—how he is given notice in all cases, given an opportunity to be heard—you would get a different side to the situation. We set up independent commissioners to hear those cases and make findings and recommendations, rather than letting the people who are exercising those allocation powers in the first instance—with the natural danger that goes with such administration—rather than let them decide that a man cannot have the material, because it looked as though he had done something wrong—the commissioner proceeding was set up just to guard against that abuse.

I think when you have had that explained you might get a little different side of the picture.

Mr. WALTER. Why was it necessary for you to set up procedure to provide, as you say, against abuse, when the law provides adequate safeguards?

Mr. LOMBARD. Well, it provides adequate safeguards in the form of penalties but—a case early arose in which aluminum was allocated to a concern in large quantities for making an important war material.

That company proceeded to make juke boxes out of the material. Having the responsibility for allocating aluminum for war uses, aluminum being scarcer than gold at the time, haven't we a responsibility to see that a concern does not misuse that aluminum, and when we are shown the type of use it has made of the material and the indications of what it is going to do with it, aren't we responsible to see that it doesn't waste more of this precious material?

Mr. BRYSON. In the case of misuse though you stop the use altogether, don't you?

Mr. LOMBARD. Well, if it is agreeable to your committee. I didn't come prepared to talk on this and I would like to ask if we could call Mr. O'Brian to appear and explain this situation to you if you would like to have it. Because I am afraid with just the broad cutting off of sanctions you might find that something had been done which would interfere with the desirable exercise of the allocation power which none of you intend.

Mr. HOBBS. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. HOBBS. I don't believe that would aid us materially, for the simple reason that we have already heard Mr. O'Brian.

He is an elegant gentleman and we are always glad to have him, but he told us in the hearing that he could not speak with reference to particulars, that he was talking about the broad policy.

Now, what we want is to have somebody here who can talk specifically about specific matters.

For example, I would like to know something about the *Richmond Stove case* and about these other cases that have been mentioned as illustrative of the abuses of the administration.

Now, do you know anything about those?

Mr. LOMBARD. Not specifically.

Mr. HOBBS. Well, who does?

Mr. LOMBARD. Mr. Staples, attorney in charge of compliance, is familiar with that general subject, but I think on any specific case we would like to get the file and go through it so as to give you a correct statement of it.

Mr. HOBBS. Do I understand your set-up to be that you have divided responsibility so that unless somebody should happen to know who each individual was who had that responsibility, it would be utterly impossible to get the whole picture of anything at all; is that the situation?

Mr. LOMBARD. No; but there are about—I think about 600 suspension orders that have been issued.

This *Richmond case* I heard referred to in the summer of 1942, I think it was, and there are a great many other cases that have come along since.

Now, whether there was ever a suspension order issued in this case and what the facts are I cannot remember.

Mr. HOBBS. Well, you gentlemen heard here this morning real specific charges that certain of your suspension orders or sanctions can run even beyond the expiration of the Act.

You have heard about that?

Mr. LOMBARD. Yes.

Mr. HOBBS. What we would like to have is some light on those specific points.

Mr. LOMBARD. We will be very glad to get them for you, sir.

Mr. BRYSON. We would like to stop those things.

Mr. HOBBS. We would be very glad to have Mr. O'Brian, but he told us he couldn't speak on those matters.

Mr. BRYSON. He dealt in generalities.

Mr. WALTER. Suppose war materials were withheld from a manufacturer, he would have a right to go into court but his particular

matter would not act as a supersedeas as to anything else; an appeal would be only as to his own case. Would that interfere very materially with the orderly operation of your administration?

Mr. LOMBARD. If the provision was in a form—if the right of judicial review was in a form similar to the way it is expressed in the renewal of the Emergency Price Control Act, I don't believe it would.

Mr. JENNINGS. In that Emergency Price Act there is no necessity to go into court, it sets up tribunals within the bureau itself.

Mr. LOMBARD. But there is a right of appeal by a person who has been charged with violation and against whom it is proposed to issue a suspension order, and he has a right to go into court—

Mr. JENNINGS. Yes; and the O. P. A. does this: They suspend first and then give him the right to appeal.

Mr. LOMBARD. The statute provides that the suspension order must be withheld within a certain period of time within which he has a right to appeal—

Mr. JENNINGS. No. In practice it works out the very opposite.

Mr. HOBBS. There is a 5-day suspension.

Mr. JENNINGS. I have had about a dozen cases. They suspend first and then give the man the so-called right of appeal, and then they hold the thing up, he never gets to court.

I have had cases where they held up their record because they want to file additional evidence; and when he replies to this evidence, then they counter with other evidence and keep the thing going for months and months; and of course the delay is extremely costly.

That is the difficulty.

Mr. LOMBARD. I am not familiar with it but the statute provides after last June, I believe it was, they have 5 days after a suspension order is issued under their rationing powers—this is not connected with price, this is in connection with rationing, where suspension orders must be held up for 5 days.

Mr. CELLER. What is 5 days? A man cannot prepare his case.

I am speaking of small business. I have literally hundreds of those cases in New York. I cannot take care of them.

The CHAIRMAN. Congress is disposed to try to do something about this and it does not want to do that which would handicap the agency that is doing its best to facilitate the conduct of this war.

Mr. LOMBARD. We appreciate that.

The CHAIRMAN. Now, it seems to me that in a situation of that sort where the agencies of the Government must know of these alleged abuses and the determination of the Congress to try to do something about it, that it would be a very helpful thing if they would examine their own procedures and see what can be done from the standpoint of a partnership with the Congress in seeing what can be done.

Mr. LOMBARD. We are completely in sympathy with what you have said, and have been constantly reviewing that.

We certainly have made mistakes, any agency which has a job to do and was thrown together as quickly as ours has been, it certainly would be ridiculous to claim that there haven't been mistakes, and serious ones, and hardships and injustices; but it has been the view and intent of Mr. O'Brian and all of the legal staff who were responsible for setting up this procedure, to try and guard against those very abuses with which we are familiar, and we recognize that such a broad power should be only of an emergency nature.

We would be glad to make suggestions.

The CHAIRMAN. We are dealing with a proposed amendment of existing law which affects your authority and power. It seems to me it would be helpful for your staff to get together and make suggestions to the committee which would go to Congress as to what could be done to help remedy situations that we are very much impressed need to be remedied; and at the same time that would to a minimum interfere with your work.

That would be helpful and aid us all.

Mr. LOMBARD. We will be very glad to, sir.

Mr. JENNINGS. May I say this: Tomorrow is Thanksgiving. Shall we make it Monday—

Mr. FELLOWS. Mr. Lombard, what do you think about this proposed amendment that has been suggested? Of course you are familiar with it.

Mr. LOMBARD. I am not familiar with all of the angles of it as it was expressed here. I am afraid it would interfere with those cases where immediate action is needed; and at the same time I think we can provide that protection that you are looking for, in the form of court review, without that interference.

I would want to examine it further.

Mr. FELLOWS. I understand that proposed amendment has been in that report of the committee, Mr. Smith's committee.

Isn't it?

Mr. LOMBARD. Yes, sir. Yes, sir.

Mr. FELLOWS. Aren't you familiar with it?

Mr. LOMBARD. I read it at the time, but it was a suggestion to the Price Control Act and did not apply to us.

The suspension order is merely one form of allocation, and it is an allocation away from the person. Many of our orders where they allocate more material to one person than to another have the effect of allocating away from one.

I am afraid of the language there. I would like to review it and try to make our suggestion which would fit your purposes.

Mr. GWYNNE. Mr. Chairman, one question.

The CHAIRMAN. Yes.

Mr. GWYNNE. Isn't it true that during this next year the amount of material that will be allocated for war purposes will get less all the time and the amount allocated for civilian purposes will get more and more, and therefore don't we have a different situation confronting us than we had when we passed this law originally?

Now, the question I am interested in is this:

You will be having next year, I dare say, many disputes between rival washing machine companies, say, allocations made to one and not to another.

Now, is there any appeal at all?

Mr. LOMBARD. Yes, sir, there is an appeal procedure.

Mr. GWYNNE. I know, but any appeal outside of your own organization?

Mr. LOMBARD. No, sir.

Mr. GWYNNE. In other words, you will virtually have the power of life and death over industry, won't you, this next year?

Mr. LOMBARD. That is right, in the broad sense.

Mr. GWYNNE. And nobody can say you nay. Is that about it?

Mr. LOMBARD. I merely would like to suggest that if you have an appeal on questions such as you indicate, to somebody outside, in effect you are giving the body to which the appeal is made the allocation power; and unless they had a setup with all the knowledge and material available to them that the entire War Production Board has, you would be having them act without sufficient information.

That is why we try to be very careful in the procedures within our own organization to provide the necessary appeal.

Mr. ROBSION. You mean this group would have the power but would not have the knowledge?

Mr. LOMBARD. That's right.

Mr. JENNINGS. I wonder also if Mr. Lombard couldn't confer with Mr. O'Brian and others so you can dovetail. I think the O. P. A.—

Mr. HOBBS. The O. P. A. is operating under this very power.

Mr. JENNINGS. The O. P. A. touches intimately the lives of more people than the War Production Board.

Mr. WALTER. I trust you will give this careful consideration, because I can see the possibility of the most vicious fraud we ever heard of in the closing days of this war.

Mr. HOBBS. This is off the record.

(Discussion off the record.)

Mr. GWYNNE. The House is in session.

The CHAIRMAN. I know it is. We have to get over there.

Gentlemen, what is the suggestion as to continuing this?

Mr. HOBBS. I don't know unless we could come back this afternoon. Mr. Wasielewski is here and he has a couple of gentlemen with him. He has reference to the analogy between his own particular bill which would make further restriction on the question of contracts by the War and Navy Departments.

The CHAIRMAN. Under this action here I suppose it is first emergency probably, because it expires the last of December, and the Congress is going to try to get away pretty soon, and let us see if we cannot get back here—

Mr. BRYSON. Friday?

Mr. JENNINGS. May I suggest that Friday is a bad day. I wouldn't be able to get back here.

I make an earnest request in that regard.

Mr. HOBBS. Mr. Wasielewski has an idea there should be no more of the cost-plus percentage in the contracts but there might be a cost-plus or fixed-fee. Now, Mr. Wasielewski's idea is that they should strike that out and say in future there must only be contracts let by negotiation for a lump sum.

Mr. WALTER. If you are going into that question, Mr. Chairman, Mr. Hensel called me just before the meeting was called this morning and told me he would like to be here.

I am sure the Navy wants to be heard.

The CHAIRMAN. Off the record.

(Discussion off the record.)

Mr. JENNINGS. How long would it take, Mr. Lombard, to get your matter in shape with Mr. Emerson and Mr. Bowles and the others?

Mr. LOMBARD. Well, I think we could do it very promptly. I will go back now and try to see Mr. O'Brien and get in touch with Mr. Field who is general counsel of O. P. A.

Mr. JENNINGS. You ought to get in touch with New York too, because that is the very nerve center of your O. P. A.

The CHAIRMAN. Gentlemen, how about trying to get back here at 3 o'clock?

Mr. HOBBS. Off the record.

(Discussion off the record.)

Mr. LOMBARD. We could report on any specific cases that you want to be familiar with, this afternoon.

Mr. HOBBS. I am talking about Mr. Wasielewski. In other words, this criticism of the bill calling for an amendment.

The CHAIRMAN. We are pretty near through the consideration of this amendment before the committee, if we could just finish it up now.

How many witnesses do you have, Mr. Wasielewski?

Mr. WASIELEWSKI. I have one witness here.

The CHAIRMAN. We can try to get back at 3 o'clock. If we are tied up in the House we just cannot do it; but with that understanding let us try to see if we cannot get back here at 3 o'clock.

(Whereupon, at 12:05 p. m. a recess was taken until 3 p. m. of the same day.)

(The following were submitted for the record:)

LETTER AND ACCOMPANYING DOCUMENTS FROM LORING M. STAPLES, ASSISTANT GENERAL COUNSEL, WAR PRODUCTION BOARD, WITH RESPECT TO SOUTHERN STOVE WORKS, INC., RICHMOND, VA.

NOVEMBER 25, 1944.

Congressman SAM HOBBS,

*Chairman of the Subcommittee, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR JUDGE HOBBS: In accordance with your request, I am enclosing herewith certain documents listed below for insertion in the record of the hearing before your committee on the subject of extension of the Second War Powers Act (H. R. 4993). Some of these documents relate to the action taken against the Southern Stove Works, Inc., of Richmond, Va., which was referred to both by Judge Smith and by Radio Commentator Earl Godwin as an example of misuse of our powers.

The documents are as follows:

1. Copy of form of "Charging letter" which is sent to apparent violators of War Production Board orders.
2. Copy of information sheet regarding hearings in compliance cases which is enclosed with all charging letters.
3. Copy of Rules and Procedures Governing Appeals From Suspension Orders. These are given to respondents by the compliance commissioners at the time the hearing is held.
4. Copy of Suspension Order S-201, issued January 1, 1943, effective March 1, 1943, involving the Southern Stove Works, Inc.
5. Authorization to Southern Stove Works, Inc., to apply preference ratings to move iron castings from its foundry to its factory as an exception to S-201.
6. Copy of letter from Southern Stove Works, Inc., acknowledging and expressing appreciation of the exception.
7. Revocation of Suspension Order S-201, issued March 20, 1943. You will note that the order was only in effect for 20 days. No stay was requested. As I said in my testimony before your committee, the Chief Compliance Commissioner almost invariably grants a stay if one is requested.
8. Copy of letter from Southern Stove Works to chief compliance commissioner Walter H. Foster, acknowledging revocation of S-201 and expressing appreciation.

I believe that I stated correctly to the committee all pertinent facts in the Southern Stove Works' case as they appear from the record in our possession. In all our cases, a reporter makes a verbatim transcript of the evidence and this will be furnished your committee if you desire it. We had previously furnished it to Judge Smith. As I stated to your committee, Southern Stove Works had never been granted any authorization to make grates by the Appeals Board of the War Production Board and the suspension order was predicated upon violations which occurred after they had been specifically advised that the manufacture of grates was unlawful and after the basic order (limitation order) governing the use of iron and steel in the manufacture of grates had been amended to make this doubly clear.

Sincerely yours,

LORING M. STAPLES,
Assistant General Counsel.

FORM OF CHARGING LETTER

An investigation conducted by this office discloses that you have apparently violated War Production Board Order-----in the following respects :

This-----constitutes a violation of War Production Board Order-----, issued on-----

You are hereby notified that this matter will be presented to a Compliance Commissioner of the War Production Board at a hearing to be held at the office of the Commissioner at-----in-----

Arrangements regarding the data of the hearing should be made as promptly as possible by communicating with the Compliance Chief. Unless word is received from you on or before-----, the Compliance Chief will set a date for the hearing and notify you. The nature and scope of the hearing is described in the enclosed information sheet.

In the event you do not desire to appear at the hearing, you should notify the Compliance Chief promptly, and you may answer the charges contained herein by a letter mailed on or before-----addressed to the Compliance Commissioner at the address given above.

After consideration of all facts and circumstances and your statement of explanation, if any, the Compliance Commissioner will make such recommendations and directions as he deems appropriate. The Compliance Commissioner may: (a) Recommend that a suspension order be issued against you withholding priorities, allocation, or allotment assistance from you and prohibiting or restricting you from receiving, processing, using, delivering, or dealing in any material or product, the supply, distribution, use, or production of which is governed by any Order of the War Production Board; (b) Recommend that the matter be referred to the Department of Justice for the institution of civil or criminal proceedings against you; or (c) Direct that the matter be closed.

INFORMATION REGARDING HEARINGS IN COMPLIANCE CASES

(a) The Compliance Commissioners of the War Production Board are appointed by the Chairman, are attached to his office, and are responsible solely to him. They are not a part of the Office of the General Counsel or the Compliance Division. The sole duty of Compliance Commissioners is to hear and determine charges of violation of orders and regulations of the War Production Board which have been brought by the Compliance Division against persons or corporations, who are referred to as respondents.

(b) When a letter charging specific violations has been issued by a Regional Compliance Chief, the respondent is advised that the matter will be presented to a Compliance Commissioner at a hearing. The respondent should write or 'phone the Regional Compliance Chief to arrange a date for the hearing. In the event the respondent does not communicate with the Regional Compliance Chief prior to the date specified in the letter, the Regional Compliance Chief will set the date and the respondent will be advised.

(c) Hearings before Compliance Commissioners are held for the purpose of bringing forth all of the facts and circumstances relevant to the charges which have been made. These hearings are purely voluntary and no respondent is

required either to attend or to testify. Violations of W. P. B. regulations and orders are criminal offenses, punishable by imprisonment or a fine under the Second War Powers Act, and respondent is entitled to his constitutional privileges against self-incrimination. The Compliance Division is represented by its attorneys and such investigators or analysts as are necessary to present its side of the case. The respondent may be represented by counsel and should bring to the hearing such other persons as are necessary to present its defense or explanation of the charges. The respondent should be represented by persons thoroughly familiar with its operations and the controls it has established to comply with applicable orders and regulations. If records or reports are to be offered in support of the respondent's explanation or defense, the person offering such records or reports should be familiar with their preparation and factual background. Two copies of any explanatory statement which has been prepared and one copy of every other document to be offered for the Commissioner's consideration should be submitted at the hearing.

(d) Witnesses at hearings are not placed under oath unless the Commissioner deems it necessary. At the beginning of each hearing the Commissioner will attempt to determine what facts are in issue. If the respondent admits the facts which constitute the violations charged, the Commissioner will request the respondent to present whatever explanation or defense he has to offer respecting the charges. If, on the other hand, respondent denies any or all of the facts set forth in the charges, the Compliance Division will be called upon to produce proof of the charges. A transcript of the proceeding is made by a court reporter, and a copy of it may be obtained by the respondent at his own expense.

(e) Respondent's explanation or defense should in general be restricted to matters which may excuse, explain, or disprove the violations charged. Respondent will, however, be afforded an opportunity to state by way of explanation any operational difficulties or problems which may have caused or contributed to the violations, including problems of accounting, bookkeeping, production or purchasing, or any other practical difficulties experienced in conforming or attempting to conform to the applicable regulations or orders. The Commissioner may also call upon production or priority experts of the War Production Board for advice or assistance during the course of the proceeding.

(f) Respondent should be prepared to submit a summary of his unfilled orders together with preference ratings, authorized production schedules, or allotments applicable thereto and percentages and types of war and civilian products. This summary should be prepared in sufficient detail to give an accurate picture of respondent's current operations.

(g) Compliance proceedings are instituted for the purpose of ascertaining whether or not violations have occurred and, if violations are found, for the further purpose of determining the reason for the violations and how they can be prevented in the future. After considering the case, the Compliance Commissioner may recommend: (a) That a suspension order be issued against the respondent, withdrawing or withholding priorities assistance and allocations or allotments of scarce materials or otherwise restricting the respondent in the acquisition, production, use, or disposition of scarce materials or items containing scarce materials, or otherwise regulating the business conducted by respondent in order to assure future compliance; (b) That the case be referred to the Department of Justice with a recommendation for the institution of civil or criminal proceedings; (c) In less flagrant cases that final disposition of the case be deferred during a designated period of probation; (d) That no action be taken and the case be closed.

(h) Upon the basis of the facts brought forth at the hearing, the Compliance Commissioner will make a report containing findings of fact and recommendations. In the event the Commissioner recommends the issuance of a suspension order, the report will be forwarded to Washington, where the recommendation will be subject to review by the Director of the Compliance Division and by the General Counsel of the War Production Board, but only in the following respects:

1. If either the Director of the Compliance Division or the General Counsel do not concur, no suspension order may be issued, and

2. The Director of the Compliance Division and the General Counsel may jointly revise the recommended order by reducing the period of suspension or otherwise mitigating the effect of the order, but may not prescribe a more severe order than has been recommended.

- (i) If the respondent objects to the action taken against him, he may appeal in writing to the Chief Compliance Commissioner, War Production Board, Washington, D. C., whose decision in the case shall be final. A copy of the "Rules and

Procedure Governing Appeals from Suspension Orders" will be given the respondent or his attorney at the time of the Compliance hearing. In all cases in which a Suspension Order is issued, a copy of the Compliance Commissioner's Report and Final Recommendations will be sent to the respondent with a copy of the Suspension Order.

RULES AND PROCEDURES GOVERNING APPEALS FROM SUSPENSION ORDERS

Section 1. *Appeals by Respondents.*

.01 Any person or corporation affected by the provisions of a Suspension Order may appeal from any or all of the provisions of such order to the Chief Compliance Commissioner of the War Production Board.

.02 The appeal shall be made in writing and must be submitted within thirty days from the date of issuance of the Suspension Order, provided, however, the Chief Compliance Commissioner may in his discretion permit the filing of an appeal at any time during the effective period of the Suspension Order.

.03 The respondent will file a signed original and three copies of the appeal with the Chief Compliance Commissioner, Room 4062, Social Security Building, War Production Board, Washington, D. C. The Chief Compliance Commissioner will furnish copies of the appeal to the Director of the Compliance Division and the appropriate Regional Compliance Chief.

.04 The appeal shall set forth the points relied upon by the respondent for relief from the provisions of the Suspension Order together with the arguments advanced in opposition to the findings. The appeal may also set forth the effect of the Suspension Order upon the respondent's operations. The Chief Compliance Commissioner will not consider arguments bearing on the policy embodied in the orders or regulations which the respondent has been found to have violated.

.05 The Director of the Compliance Division or the Regional Compliance Chief who issued the letter charging the violation upon which the Suspension Order was based may within fifteen days from the receipt of an appeal file with the Chief Compliance Commissioner an answer to the appeal. A copy of any such answer shall be furnished the respondent, and within five days from the receipt of the answer, respondent may file with the Chief Compliance Commissioner a reply. The Chief Compliance Commissioner may in his discretion require the filing of an answer within a shorter period of time.

.06 The Chief Compliance Commissioner may after the filing of an appeal permit the appellant to appear before him and make an oral presentation of his appeal. The Director of the Compliance Division will be notified of any meeting and a representative of the Compliance Division will be permitted to attend and present the views of the Division.

.07 The Chief Compliance Commissioner, after a review of the record in the case in the light of the appeal, the answer and the reply will either grant or deny the appeal in whole or in part, and his decision thereon shall be final.

Section 2. *Stays Pending Appeal.*

.01 Pending the determination of an appeal, the Chief Compliance Commissioner may in his discretion stay the provisions of a Suspension Order. An application for a stay must be made in writing to the Chief Compliance Commissioner.

Section 3. *Deputy Chief Compliance Commissioner.*

.01 The Chief Compliance Commissioner may assign cases to his Deputy who shall be authorized to exercise any and all of the powers of the Chief Compliance Commissioner with respect to the cases so assigned.

The foregoing rules and procedures are prescribed pursuant to the authority vested in the Chief Compliance Commissioner by the Chairman of the War Production Board under date of November 18, 1942.

WALTER H. FOSTER,
Chief Compliance Commissioner, War Production Board.

S-201
JAN. 1, 1943

WAR PRODUCTION BOARD

PART 1010—SUSPENSION ORDERS

[Suspension Order S-201]

SOUTHERN STOVE WORKS, INC.

Southern Stove Works, Inc., is a Virginia corporation doing business at Sixth and Dinwiddie Avenue, Richmond, Virginia, and is engaged in the manufacture of various types of heating equipment. From September 1, 1942 to October 8, 1942 the Company put into process approximately 320,000 pounds of iron to make 4,520 portable iron fireplace grates or parts thereof. All but approximately 600 grates were assembled and all but approximately 670 of the assembled grates were sold during that period. Although the company was aware on or about September 1, 1942 that portable iron fireplace grates such as it manufactured were considered to be items of "fireplace equipment" whose manufacture, assembly and sale were prohibited by General Conservation Order M-126, and although General Conservation Order M-126 on September 3, 1942 specifically included fireplace grates on its list of prohibited items, the Company greatly accelerated its rate of production of these grates during the month of September 1942 and especially during the first week in October 1942. These acts of the Company constituted wilful violations of General Conservation Order M-126.

These violations of General Conservation Order M-126 committed by Southern Stove Works, Inc., have hampered and impeded the war effort of the United States by diverting iron to uses unauthorized by the War Production Board. In view of the foregoing, It is hereby ordered, That:

§ 1010.201 *Suspension Order S-201.* (a) From March 1, 1943 to May 31, 1943 deliveries of materials to Southern Stove Works, Inc., its successors and assigns, shall not be accorded priority over deliveries under any other contract or order and no preference rating shall be assigned or applied to such deliveries by means of preference rating certificates, preference rating orders, general preference orders, or any other order or regulation of the Director of Industry Operations or the Director General for Operations, except as specifically authorized by the Director General for Operations.

(b) From March 1, 1943 to May 31, 1943 no allocation shall be made to Southern Stove Works, Inc., its successors and assigns, of any material the supply or distribution of which is covered by any order of the Director of Industry Operations, or the Director General for Operations, except as specifically authorized by the Director General for Operations.

(c) Nothing contained in this order shall be deemed to relieve Southern Stove Works, Inc., its successors and assigns, from any restriction, prohibition or provision contained in any order or regulation of the Director of Industry Operations or the Director General for Operations, except in so far as the same may be inconsistent with the provisions hereof.

(P. D. Reg. 1, as amended, 6 F. R. 6680; W. P. B. Reg. 1, 7 F. R. 561; E. O. 9024, 7 F. R. 329; E. O. 9040, 7 F. R. 527; E. O. 9125, 7 F. R. 2719; sec. 2 (a), Pub. Law. 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

(d) Issued this 1st day of January 1943.

ERNEST KANZLER,
Director General for Operations.

FEBRUARY 27, 1943.

SOUTHERN STOVE WORKS, INC.,
Richmond, Va.

(Attention Mr. E. J. Burke, president.)

GENTLEMEN: This is in reference to a letter addressed to Mr. W. John Logan, Director, Compliance Division, dated February 24, 1943, from the managing director, The Institute of Cooking and Heating, Appliance Manufacturers, Washington, D. C., requesting an interpretation of the provisions of paragraph (a) of Suspension Order S-201, issued against your company. You are hereby advised that an exception is granted to the provisions of Suspension Order S-201 to permit your company to apply such preference ratings as are in your possession and as are

necessary under Conservation Order S-21, to move iron castings from your foundry to your factory.

Except as provided in the above paragraph, the provisions of this letter in no way authorize the use of preference ratings in any manner inconsistent with the terms of Suspension Order S-201 or any other order or regulation of the Director General for Operations.

Very truly yours,

CURTIS E. CALDER,
Director General for Operations.

SOUTHERN STOVE WORKS,
Richmond, Va., March 2, 1943.

Ref: CA:AAB.

WAR PRODUCTION BOARD,

Washington, D. C.

(Attention Mr. Curtis E. Calder, Director General for Operations.)

GENTLEMEN: We acknowledge with thanks your letter of February 27, in which you advise that an exception is granted to the provisions of Suspension Order S-201 to permit us to apply such preference ratings as are in our possession and as are necessary under Conservation Order M-2 to move iron castings from our foundry to factory.

We want you to know that we appreciate this.

Yours very truly,

SOUTHERN STOVE WORKS, INC.,
By E. J. BURKE, *President.*

S-201
REVOCATION
MARCH 20, 1943

WAR PRODUCTION BOARD

PART 1010—SUSPENSION ORDERS

[Revocation of Suspension Order S-201]

SOUTHERN STOVE WORKS, INC.

Southern Stove Works, Inc., Richmond, Virginia, has appealed from the provisions of Suspension Order S-201, issued January 1, 1943. After reviewing the Company's appeal, it has been determined that the Company was in doubt as to the effect of War Production Board orders upon its operations during the period when its violations occurred and was not willful or culpably negligent in failing to ascertain the exact effect of such orders. In view of the foregoing, *It is hereby ordered*, That:

§ 1010.201 *Suspension Order S-201.* (a) Section 1010.201, Suspension Order S-201, issued January 1, 1943, is hereby revoked.

Issued this 20th day of March 1943.

CURTIS E. CALDER,
Director General for Operations.

SOUTHERN STOVE WORKS,
Richmond, Va., March 23, 1943.

Mr. WALTER H. FOSTER,

Chief Compliance Commissioner,

War Production Board, Washington, D. C.

DEAR SIR: We acknowledge with appreciation your letter of March 19, in which you advise you recommended that Suspension Order S-201 be revoked.

We have received the official order from Mr. Curtis E. Calder, Director General for Operations. We want you to know that we appreciate the patience and consideration expended by you during the various conferences with your good friend, Mr. Samuel Duncel, managing director of the Institute of Cooking and Heating Appliances, in connection with our case.

Very truly yours,

SOUTHERN STOVE WORKS, INC.,
By E. J. BURKE, *President.*

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Mr. HOBBS. Mr. Chairman, I have a report that several of the gentlemen are tied up and will be over here as soon as the conference over there is concluded. I think we had better go ahead.

The CHAIRMAN. I think so.

Mr. SPRINGER. Yes, sir.

Mr. HOBBS. Mr. Wasielewski, may I ask you a question before you start?

Mr. WASIELEWSKI. Surely.

Mr. HOBBS. Wasn't the subject matter of your proposed bill considered at length in Senate Joint Resolution 80?

Mr. WASIELEWSKI. I couldn't say. I am not acquainted with Senate Joint Resolution 80.

Mr. SPRINGER. Your bill is 4352, Mr. Wasielewski?

Mr. WASIELEWSKI. That's right; 4352.

Mr. HOBBS. Of course, you understand he is not here testifying as to his bill.

Mr. SPRINGER. I understand.

Mr. HOBBS. He is talking about title III, Mr. Springer.

Mr. SPRINGER. Yes, sir. Also, didn't I understand he was going to show how his bill would reflect insofar as title III is concerned?

Mr. HOBBS. I don't know.

STATEMENT OF HON. THAD F. WASIELEWSKI, A MEMBER OF CONGRESS FROM THE STATE OF WISCONSIN

Mr. WASIELEWSKI. Title III, as I remember it, provides that no contracts are to be let under the cost-plus except such as the Secretary of the Navy felt were absolutely necessary. That does leave a wide door open. I am not making any charges of abuse of this broad discretionary power or anything like that, but we do know that the cost-plus contracts that have been released heretofore have not been very satisfactory so far as the cost is concerned.

Mr. Chairman, I have a brief statement that I have written out that I would like to present to the committee at this time.

While the Committees on Naval Affairs and Military Affairs and Judiciary were carrying on their most revealing exposures of the high cost of war production and brought to bare the exorbitant profits made by some contractors, the Committee on Ways and Means, of which I happen to be a member, was struggling with the problem of the renegotiation of war contracts. The abusive practices of some of the contractors and subcontractors alarmed me as well as many of the other members of the House. I discussed these problems and the possible solution of them with a number of my colleagues and friends.

Mr. Frederick W. Lord, of New York City, was also immensely interested in clearing up the existing system.

One of my friends was an assistant counsel for one of the investigating committees and, knowing my interest, had Mr. Lord call on me.

We exchanged ideas on this subject matter over the course of several months through his secretary, Mr. Harris. I suggested that Mr. Lord prepare a memorandum that I might submit to the legislative counsel and drafting service in order that some legislation might be prepared.

Subsequently a memorandum was prepared and a bill was introduced on January 18, 1944, as H. R. 4010.

Some weeks after that a number of revisions and amendments were made to the proposed legislation and on March 8, 1944, H. R. 4352 was introduced.

The purpose of this legislation is to replace the present provisions in the War Powers Act with reference to the cost-plus and other systems of contracting for public construction, by a system of negotiated lump-sum contracts.

H. R. 4352 is by no means a perfect bill. It is my personal hope that your committee, with its broad learning and experience, will perfect and amend this legislation to make it adaptable to all forms of contracts. This bill as I presented it applies more specifically to construction work, but it can be broadened out to cover other fields of contract services.

In my judgment it presents the nearest approach to common sense yet devised for Government buying of contract services.

Because it lacks a check on excessive costs the cost-plus contract has been found unfair to the Government. There is no reason in the world why the Federal Government should be obliged to pay more for the performance of a contract than would a private citizen or corporation.

Under the lowest bid competitive plan, any contractor who can furnish a bond can compete and, if low bidder, is awarded the contract. The experience, organization, integrity, ability, and willingness to perform to the satisfaction of the buyer are not likely elements to be considered in selecting a prospective bidder. Price almost alone is the only consideration.

These elements are more important to the success as well as to the cost of contract performance, than any relatively small difference in price between the low bidder and a high bidder; however, the awarding officer under the present law is prevented from giving proper weight to these factors.

The negotiated contract affords the awarding officer the opportunity to give due consideration to all of these elements, to the mutual advantage of both the buyer and the seller.

The contracting systems now employed by the various Government awarding authorities are greatly impeding the war effort. They are directly responsible for the needless loss of many millions of man-hours and enormous sums of money.

The authorized contracting methods now used by the Government awarding authorities have all been thoroughly discredited.

I might at this time point out some of the evils of the cost-plus system:

1. The working force consciously or unconsciously feels that the cost-plus contract is a legitimate reason for extending the man hours.
2. The field organization, consisting of clerks, stenographers, bookkeepers, engineers, stockkeepers, timekeepers, and so forth is overmanned.
3. Hoarding of labor, especially skilled labor.
4. Overmanning on orders from the officer in charge.
5. Reserving the best and most efficient men for lump-sum contracts.
6. Voluminous amount of red tape and paper work.

7. Lack of incentive of management to save on labor.
8. Lack of incentive of management to buy close.
9. Extravagant overordering of materials.
10. If cost-plus work is done concurrently on a lump-sum contract there is at least the risk that labor and materials that should be charged to the contract work are charged to the cost-plus work.

The evils of the present competitive system can be enumerated as follows:

(1) it leads to collusive bidding and price-fixing; or (2) various trade practices and evils which result in (1) bid peddling, (2) chiselling, (3) price cutting, (4) poor work, (5) slow progress, (6) litigation, (7) bankruptcy, (8) economic waste, or overcharging on changes and extras and other kinds of profiteering.

H. R. 4352 sets up a means of protecting the Government from profiteers. It provides for a simplified system of auditing and adjustment of fees. It sets up a formal process of renegotiation of various construction contracts and acts as an aid to such process. It provides a means of removing many of the causes of unfair trade practices in public construction which many representative contractors have been endeavoring to wipe out. It provides a triple check of costs of every contract negotiated under it; that is, first, an estimate of the work to be done is established before a general contractor is selected; second, a check and approval of the contract and subcontracts must be made by the ratifying committee before the work is begun and finally, third, the ratifying committee makes a complete audit of the books of the contractor and subcontractors before final payment.

In order to avoid the abuses that creep into contracts as a result of extras, H. R. 4352 specifically provides that all extras shall be negotiated for in advance on a lump-sum basis in the same manner as prescribed for in the original contract.

A central construction-contract ratifying committee is established under H. R. 4352 which would have jurisdiction over all construction and building contracts that are entered into by any and all the various Government awarding authorities. In this way, a more uniform system of contract letting is established and takes the matter out of the hands of whimsical individuals. This ratifying committee is to consist of three members who are qualified engineers or architects. The ratifying committee shall have the power to disapprove any contract that does not comply with the existing law and the provisions of this act and shall have available to it all the records in connection with all contracts that are negotiated by any and all Government agencies. No contract can be consummated without its approval. It shall also have the power to adjust any and all differences arising between the awarding authority and the contractor or between the contractor and a subcontractor. The centralization of the ratification of all contracts should greatly aid in avoiding conflicts and confusion that occur under the present system of letting Government contracts.

Mr. Chairman, as I stated earlier, H. R. 4352 deals only with construction and building contracts. It is my fervent hope that your committee may perfect, expand, and elaborate it to cover all Government procurement. In order to prevent the abuses that have been creeping into Government contracts, it is the duty and obligation of

Congress to adopt a set and definite policy governing all Government contracts and procurement in general. The plan I submit is not a perfect one, and I am not wedded to any to any particular part of it. However, I believe it points in the right direction and should be developed to that end. I trust that these suggestions may be incorporated into the law of the land as quickly as possible, for it is, in my opinion, a long step toward holding and cutting down the cost of waging war and any and all work that may be planned in the post-war era.

Mr. MICHENER. Your bill deals primarily with construction like road building and so forth, highways?

Mr. WASIELEWSKI. Highway construction of all kinds, bridges, and housing; and I hope that it might be extended to cover all types of Government contracts.

Mr. MICHENER. How about the manufacture of automobiles and guns and munitions?

Mr. WASIELEWSKI. Of course the bill does not cover that field, but I had hoped it might be broadened out to cover all forms of Government services.

Mr. MICHENER. You would eliminate competitive bidding entirely?

Mr. WASIELEWSKI. Yes, sir; so far as Government work is concerned.

I pointed out some of the evils of competitive bidding as we find it today, because so often the only element that is considered in the letting of competitive bids is whether or not the contractor can get a bond, and that is not usually a sufficient ground for guaranteeing his satisfactory and efficient performance.

Mr. MICHENER. Do you know any State or city that does its purchasing in any other way than by competitive bidding?

Mr. WASIELEWSKI. I couldn't answer that. I don't know of any personally.

Mr. MICHENER. I never heard of any.

Mr. WASIELEWSKI. Of course, when you are buying a staple commodity then of course competitive bidding is more practical than if you are working with personal services, construction, or the like.

I have Mr. Comstock here who is an electrical engineer and has had over 50 years' experience in the contracting field. He is here and can answer the technical questions that you may have in mind on this subject matter.

Mr. WALTER. Mr. Wasielewski, as I understand it, this bill applies principally to construction work.

Mr. WASIELEWSKI. That is right.

Mr. WALTER. In view of the fact that the construction program for the most part has been completed long since, do you think we ought to consider this legislation in connection with the extension of the War Powers Act?

Mr. WASIELEWSKI. Well, that may or may not be true. I prepared this measure several months ago, and I thought possibly the committee might broaden it out to cover all forms of Government contracts. This is merely a suggestion. I know that your committee isn't gathered here to hold hearings on my bill, but I am humbly suggesting that the ideas in my bill be incorporated in the War Powers Act, in lieu of title 3. In my own district I have had a number of manufacturers tell me that some of their employees, when working on cost-plus contracts, loaf and their efficiency falls down anywhere from 10 to 25 percent. I

have also heard complaints from labor leaders that when working on cost-plus contracts some manufacturers have more men on the job than they actually need, and hoard manpower. Since the complaints regarding abuses under cost-plus-fixed-fee system are so prevalent, we certainly ought to try to do something to eliminate that form of contracting.

Mr. SPRINGER. Now, your bill, as written now, Mr. Wasielewski, does not cover the production of arms and ammunition?

Mr. WASIELEWSKI. No; it doesn't, Mr. Springer.

Mr. SPRINGER. But it relates to construction work such as roads, bridges, housing, and things of that kind.

Mr. WASIELEWSKI. That is right.

Mr. SPRINGER. That is mostly behind us now, isn't it?

Mr. WASIELEWSKI. Well, the war is not over yet; and if it were, we have a great deal of deferred production that may be carried on in the post-war period. But, as I mentioned, I feel that the principles as set forth in my bill might be broadened out to cover types of contracts which may have to be completed before the war is over.

Mr. HANCOCK. You propose this as permanent legislation?

Mr. WASIELEWSKI. Sir?

Mr. HANCOCK. Do you propose this as permanent legislation?

Mr. WASIELEWSKI. Yes.

Mr. SPRINGER. But, Mr. Wasielewski, after we get into the post-war period, don't you think the best method would be the competitive system where we get the lowest bidder for work such as you mention?

Mr. WASIELEWSKI. There is some difference of opinion as to whether or not you get the most for your money in competitive bidding.

Mr. SPRINGER. But is it not a fact that in every city and in every county and every State that is the method that is pursued; they award the contract after considering the bids of competitive bidders?

Mr. WASIELEWSKI. I know that is the common thing.

Mr. MICHENER. Your method would have been a fine thing 2 or 3 years ago for the war effort, but why now change the plan that has been tried down through the years and decided to be the best, not only by the Federal Government but every State in the Union?

Mr. HANCOCK. Mr. Wasielewski, the Post-War Planning Committee ran into this type of legislation and we found that numerous hearings were conducted by this special committee in the Senate that was set up to study this very thing.

Mr. SPRINGER. Do you have another witness?

Mr. WASIELEWSKI. Yes, Mr. Comstock; will you come up, please.

Mr. Comstock is a graduate engineer and he may be able to more fully answer the questions that you have raised.

Mr. WALTER. Will you state your full name for the record.

Mr. COMSTOCK. Louis K. Comstock.

STATEMENT OF LOUIS K. COMSTOCK, ELECTRICAL ENGINEER, NEW YORK CITY

Mr. MICHENER. What is your residence and connection?

Mr. COMSTOCK. My residence is New York. I have been associated with the construction industry for over 40 years, during the major part of that time I have operated my own business.

I organized a business in 1904 and was its president until 1928, when I became the chairman of the board of the company; and resigned as chairman of the board in December of 1940.

During the following year, in October, as a matter of fact, I was invited to come to Washington to take the chairmanship of the Board of Review, which is a board set up by the stabilization agreement, that agreement that was made by the five Federal Government procurement agencies and the building construction department of the American Federation of Labor, and by the terms of that agreement the Board of Review is provided for to settle disputes that arise under the agreement; so I have no connection today with the construction business.

When this bill first came to my attention some few months ago it presented the idea to me that here was an opportunity, the first opportunity that has come to the surface in years, longer than I can remember, where a lump-sum contract could be negotiated on a competitive basis.

Now, we talked about letting contracts to the lowest bidder.

One of the gentlemen over here referred to the fact that it was an old-established custom.

That is true. It is an old-established custom.

But under this bill you carry the idea of competition a little bit further than price.

Now, anybody who is acquainted with the construction business knows that price is not the only criterion.

The history of the bonding companies can tell you all about that, how many contracts the bonding companies have been obliged to finish because the contractor was the lowest bidder but he could not carry through.

Now, competition not only refers to price but refers—it should refer—to ability, organization, integrity, willingness to cooperate with the owner.

Those are just as much competitive factors as the price.

In fact I think in my own experience they are greater factors than price, because the low price almost never covers the factors that I have just mentioned; and no bill that I have ever seen, no idea that has ever been presented that I know of, has presented a plan for determining these other factors which do enter into competition.

Mr. SPRINGER. Just at that point, practically all the State laws refer to letting the contracts to the lowest and best bidder, the best bidder or responsible bidder. Now, they use those words interchangeably; some use the word "responsible" and some use the word "best."

That covers the question of a man's ability to fulfill his contract.

Mr. COMSTOCK. No. I don't agree with that at all.

The CHAIRMAN. How is the Government to be protected unless there is some such limited condition when the contract is made by somebody who does not lose anything if the contract is made at too high a price?

I mean it is a little different than where the man who is making the contract may lose some money.

Mr. COMSTOCK. Well, I don't get the drift of your question.

The CHAIRMAN. Well, you turn someone loose and on behalf of the Government he makes a contract. Now, if he doesn't let that contract to the lowest bidder—I think they usually put in "the best bidder."

What is to prevent whoever makes the contract from engaging in all sorts of partiality and favoritism and extravagance?

Mr. COMSTOCK. Well, this bill does that.

The CHAIRMAN. How can it do it?

Mr. COMSTOCK. By setting up a review committee, an analyzing committee that works with the Government negotiator and the contractor.

Now, when you can the objective of the contractor and the objective of the buyer in the same pigeonhole and they become the same objectives, half of your troubles, three-fourths of your troubles are over; because both sides of that contract are working to the same point, to the same objective.

Now, it has just been said that the practice has been to let the contract, a contract by a governmental agency, whether it is Federal, State, or municipal, the practice has been to let to the lowest best bidder.

Well, now, what does that practice mean, actually?

Mr. WALTER. It isn't the practice at all, it is the law; the law requires that the contract be let to the lowest responsible bidder; and the Comptroller, Mr. McCarl, ruled that it meant that it was covered by a bond.

Mr. COMSTOCK. I know it is the law, but it doesn't get the results.

The CHAIRMAN. You would substitute a law which gives everybody an opportunity?

Mr. COMSTOCK. Well, you know perfectly well all contractors are not equal. They are a long, long way from being equal.

Now, the trick is to find out how to evaluate those inequalities between them and select your best bidder.

The practical operation of your law is that the best bidder is the lowest bidder. You know that is the way it works out practically.

The CHAIRMAN. Well, you practically turn loose, don't you—unless you do have such limitation as that—you practically turn loose the agent of the Government?

Mr. COMSTOCK. You still can have that criterion under this bill.

The CHAIRMAN. Sir?

Mr. COMSTOCK. You still can have that criterion under this bill.

You have got your Government negotiator working in connection with the reviewing committee and the contractor, and they are all working together.

Now, one of that trio cannot put it over on the other two very well.

Mr. SPRINGER. But there isn't any provision in this bill that provides that contracts shall be let to the lowest and best or responsible bidders.

Mr. COMSTOCK. Well, I am not supposed to be here to ask questions I suppose, but I would like to ask you, what is your definition of the lowest best bidder?

Mr. SPRINGER. My definition of the lowest best bidder is a man who has the low bid and who is responsible and properly equipped to carry out his contract which he enters into.

Mr. COMSTOCK. You are right. Providing you are in a position to know and evaluate his responsibility.

The CHAIRMAN. Doesn't the insurer have to check in on that? They have a financial risk, and isn't that the best protection you can have?

Mr. COMSTOCK. How often have they gone wrong though?

The CHAIRMAN. I suppose they have, and a good many individuals have.

Now, this is for the purpose of developing fully your views, and I think the committee has them and we are very much obliged to you—

Mr. COMSTOCK. There is just one question, if I may presume upon your time. There is this one other angle on this question, and that is the question of renegotiation.

If this bill should become law the renegotiation sinks almost into insignificance. It doesn't amount to anything.

I hope that you will remember that.

The CHAIRMAN. Yes; we will, and we are very much obliged to you.

Mr. HOBBS. I want to say for the committee that we are very grateful for these gentlemen appearing before us this afternoon. They came at the request of our subcommittee because they have a different slant on the problem as affected by title III than any we have had as yet, and, while we felt it was too late in session for consideration of Mr. Wasielewski's bill, we felt there might be some guiding principles which he would enunciate, and which he has enunciated, and with Mr. Comstock's vast experience he might help us in deciding as to whether we want to change the rules as set forth in title III.

Mr. WASIELEWSKI. Mr. Chairman, I want to thank you for this opportunity to present views on this subject.

The CHAIRMAN. Thank you very much.

Mr. HOBBS. I wonder if there is anything we need to proceed further on the line we were on this morning.

The CHAIRMAN. I see a good many here.

Mr. WALTER. Well, the representatives of the War and Navy Departments came here to hear Mr. Wasielewski's presentation.

Mr. HANCOCK. On the method of making contracts I wonder if they recommend any change in the present law.

Mr. WALTER. I don't think they do. I think they oppose any change.

The CHAIRMAN. Gentlemen, you have heard, all of you, the statement of the gentleman who just left the stand. Have any of you any observations or suggestions to make which are indicated by what you have heard?

STATEMENT OF COL. FRED C. FOY, DIRECTOR OF PURCHASES, WAR DEPARTMENT

Colonel FOY. Mr. Chairman, I am Colonel Foy, of the War Department. I am Director of Purchases.

As far as the War Department is concerned, we have put together a body of experience based on the present act and we are getting our procurement done, although we have had difficulty in certain directions.

We would suggest on any contemplated change that the committee extend the act as it now is, in order that we may continue to work on it as it now is.

The CHAIRMAN. If there is anybody else here who has any interest in these purchases who has a contrary view from that which was just expressed, we will be glad to hear it.

Better give your name.

STATEMENT OF PATRICK H. HODGSON, ASSISTANT GENERAL
COUNSEL, NAVY DEPARTMENT

Mr. HODGSON. Patrick H. Hodgson, Assistant General Counsel, for the Navy Department.

The CHAIRMAN. And your views are not in conflict with those just stated?

Mr. HODGSON. No, sir; Mr. Forrestal and Mr. Hensel, the general counsel, have already expressed their views on S. J. 80 on which there were some hearings earlier in the summer; and although we had very short notice, I believe they would want to testify themselves on the necessity for cost-plus-fixed fee contracts if this committee should feel it necessary that they appear.

The CHAIRMAN. Now, that is very interesting.

Do you mean you want to continue the custom of cost-plus contracts?

Mr. HODGSON. Not the custom, sir; the right to use them when necessary.

The CHAIRMAN. All right. I guess we won't go into that.

Mr. WALTER. In other words, you don't want the present law changed.

Mr. HODGSON. Right, sir.

The CHAIRMAN. To what degree do you have contracts let by the cost-plus plan as distinguished from competitive bidding?

Mr. HODGSON. Well, sir, the Secretary of the Navy testified on S. J. 80, I think it was in June of this year, that the Navy Department was running about 22 percent of dollar amount and less than 1 percent in number of contracts.

Mr. GORSKI. Which way?

Mr. HODGSON. Cost plus fixed fee.

Mr. GORSKI. About 78 percent for competitive bidding?

Mr. HODGSON. Right. And the cost-plus-fixed-fee contracts were steadily decreasing.

The CHAIRMAN. Thank you, sir.

Mr. ROBSON. I want to ask the gentleman a question.

The CHAIRMAN. Yes.

Mr. ROBSON. Why the decrease? What brought that about?

Mr. HODGSON. Well, sir, the Secretary testified that whenever feasible we try to enter into a fixed-price contract.

There are situations where it is just not feasible; experimental contracts where we don't have plans and specifications and you couldn't ask a man to agree on the price.

Mr. HANCOCK. And where the contractor has had no experience.

Mr. HODGSON. Right.

The other type is where the contractor has a very small amount of working capital and has a very large amount of contracts.

Grumman Aircraft Corporation has a working capital of about \$5,000,000 and contracts of about \$600,000,000.

Mr. MICHENER. Well, as a matter of fact these cost plus fixed fee—this law was passed as an emergency measure to take care of a war necessity.

Mr. HODGSON. Yes, sir.

Mr. MICHENER. And it only maintains through the war as an emergency measure. Isn't that true?

Mr. HODGSON. That is correct, sir.

Mr. MICHENER. It is a bad thing, I think everybody recognized it at the time, but it had to be. It cost a lot of money and a lot of waste, at the same time it is one of those war necessities.

Because we in Congress have these, we have these projects in our districts, some of us do; you know what I mean, when I say there has been a lot of money wasted.

Mr. HODGSON. Yes, sir.

Mr. MICHENER. For which no one is to blame under this system.

The CHAIRMAN. Thank you very much.

Mr. HODGSON. Thank you.

STATEMENT OF MALCOMB McCOMB, DIRECTOR, PROCUREMENT POLICY DIVISION, WAR PRODUCTION BOARD

Mr. McCOMB. In March when the Senate Military Affairs Committee had before it Senate Joint Resolution 80, Mr. Nelson had the opportunity to express the War Production Board's view with respect to that legislation.

The position was that War Production Board felt it would be very dangerous indeed to pass that kind of legislation which would interfere with the services entering into cost-plus-fixed-fee contracts when in their opinion it was felt that it was necessary in the prosecution of the war.

The position of War Production Board with regard to any possible change that would prohibit the services from using cost-plus-fixed-fee contracts is the same today as it was in March.

Thank you very much indeed.

I suppose that covers the whole field.

Mr. GORSKI. May I ask one of these gentlemen——

The CHAIRMAN. Yes.

Mr. GORSKI. I have the impression that there are also cases where the Government—the War Department and the Navy Department—wants to keep secret the contracts, where it would be very dangerous to let the secret plans out to the contractors who want to bid on them, they have to be more or less suppressed.

The CHAIRMAN. That's right. We had some testimony on that.

Mr. GORSKI. Is that right, you have some secret plans you don't want a bid on?

Mr. McCOMB. Yes.

The CHAIRMAN. Let us go ahead with this.

Mr. HOBBS. Mr. Field, general counsel of O. P. A., and the assistant general counsel of W. P. B. are here now. And if there is anything you care to say on the hearing this morning we will appreciate it. And of course Mr. Staples is here. We appreciate his presence.

We don't want to rush you if you are not ready. If you are ready we will be glad to hear you.

STATEMENT OF LAURENCE M. LOMBARD, ASSISTANT GENERAL COUNSEL, WAR PRODUCTION BOARD

Mr. LOMBARD. Mr. Chairman, you asked two questions this morning, one about some specific cases that were referred to by Judge Smith and Mr. Ford, and also about the possibility of our taking the matter up with O. P. A. counsel and suggesting a possible amendment which

would answer the worry which you gentlemen had, expressed from the testimony this morning. On the first point Mr. Staples is prepared to summarize those cases whenever you would like; and on the second point, we have discussed the matter with Mr. Field, and if the committee feels that it is necessary to have modification of the present act, we have a suggestion.

I would like to say, however, that the criticism was directed primarily at suspension orders, and that is where we understood an amendment was desired if one is necessary.

We do not feel that the power to allocate through the use of the suspension order has been abused.

There have only been two court proceedings brought which involved the War Production Board, to try to enjoin the operation of a suspension order.

One of those was the *Simon case* which was referred to this morning and which Mr. Staples can outline to you.

That case was finally reversed and dismissed as moot on appeal.

The other case in which we were named as a party sought an injunction against the War Food Administration.

Now, we have record of only two injunction suits being brought, and with the careful procedure that we have set up, we question whether the power has been abused, and would prefer that the legislation not be amended.

I would like to point out in that connection that the right to review has never been contested by us, the right to judicial review.

We have never said that it did not exist, and that a person who was suspended could not go into court; and we have never asked that he be thrown out on the basis that there was no right of court review.

So that we think it does exist. And we have—

The CHAIRMAN (interposing). May I ask you this question: When the court does review, how deep would that review penetrate? What is review?

Mr. LOMBARD. In that particular case the court reviewed the entire record of the findings by the Compliance Commissioner, and the recommendations by the Compliance Commissioner and the suspension order itself. [Converses aside in an undertone.]

He had the entire record before him and refused to review it.

The CHAIRMAN. Yes; but what I asked you, What in your discretion would the court feel in such a proceeding it should not examine in reference to? What does the court under your proceeding and practice, the district court, what does the court look into? What does it inquire about?

Mr. LOMBARD. I would like to ask Mr. Staples to answer that question.

STATEMENT OF LORING M. STAPLES, ASSISTANT GENERAL COUNSEL, WAR PRODUCTION BOARD

Mr. STAPLES. It is our feeling, gentlemen, that when a court is called upon to review one of our suspension orders, the court should review it to determine whether or not the action taken by the War Production Board is arbitrary and capricious, without any foundation or basis in fact.

I can compare it in a way to the operations of an appellate court that does not ordinarily disturb the verdict of a jury or the findings of a lower court judge.

In other words, if there is evidence to support the findings and if there is justification for the issuance of the suspension order, it does not seem to me that the reviewing court would disturb the action taken by the War Production Board.

Mr. WALTER. How substantial is that?

Mr. STAPLES. I would say substantial evidence.

Mr. HOBBS. In other words, you think that the same presumption should maintain in an action of the War Production Board that is accorded a verdict by a jury or an action by a trial judge?

Mr. STAPLES. That may be a poor analogy, but it is hard to find an analogy because we are in a new field here, but we are in a better position to determine what action should be taken than a lower court, because we alone know the critical materials involved; we alone know how the actions of the violator may have interrupted the flow of material and caused a shortage; and if the court has to go into all those features of the case, it seems to me we would have to enlarge our judiciary to a considerable extent.

Mr. WALTER. You have an appellate division?

Mr. STAPLES. We have a Chief Compliance Commissioner.

Mr. WALTER. How many appeals have been taken to him?

Mr. STAPLES. As I recall, about 150.

Mr. WALTER. How many were decided in favor of the appellant?

Mr. STAPLES. I believe 53 cases resulted in modification.

You may be interested to know, in the case that Judge Smith described to you this morning, how it resulted in a reversal by the chief compliance commissioner. He failed to tell you about that case.

Mr. WALTER. You mean the *Stove case*?

Mr. STAPLES. Yes. I would like to tell you the facts about that *Stove case*.

Mr. HOBBS. We would like to hear it.

I would like to call the committee's attention to the fact that all of these appeals and the results of them are in our record.

Mr. STAPLES. I think they were brought out by our Mr. O'Brian yesterday.

Mr. HOBBS. We can read it.

Mr. STAPLES. I find to date—

The CHAIRMAN (interposing). The acoustics are not very good in here, Mr. Staples.

Mr. STAPLES. I find that to date we have issued slightly in excess of 650 of these suspension orders.

The last one I have here involved a newspaper which exceeded its quota of newsprint, and we reduced its quotas in the future to compensate for that excess.

No criminal prosecution would have restored that lost newsprint to the stock pile.

That case is under appeal, but we have afforded the violator every opportunity to be heard before the commissioner, who makes findings, and have also afforded the alleged violator, I should say, a chance of appeal.

The CHAIRMAN. In that situation would there be such an order as would deprive a newspaper of carrying on its accustomed business?

Mr. STAPLES. I am glad you asked that question, because it is our established policy under no circumstances to put a concern out of business.

In that particular case, although the excess occurred in one quarter, we have permitted the respondent to make it up over a period of something like 6 or 7 months.

We go into that very carefully.

Mr. ROBSION. Is there any dispute as to the facts?

Mr. STAPLES. None whatsoever. They admitted they had exceeded.

Mr. ROBSION. So in one quarter they used a good deal more paper than they were authorized to use?

Mr. STAPLES. Their excuse was that they were under the impression that they were entitled to use this excess amount. I mean there was a question of willfulness.

Mr. ROBSION. You let it accumulate back over a considerable period longer?

Mr. STAPLES. That's right, and we did that deliberately, because we don't want to ruin their business in any way.

Mr. ROBSION. You say it is your policy to avoid putting anybody out of business. Has anyone been put out of business, and if so, how many?

Mr. STAPLES. I should say this: We may have put concerns out of business who had established their business for the sole purpose of violating our orders.

I don't doubt that we put a great many black-market operators entirely out of business.

Mr. ROBSION. I mean legitimate business.

Mr. STAPLES. It is not our policy to put anyone out of legitimate business.

Mr. ROBSION. Do you know how many, if any, have been put out of business, legitimate business concerns?

Mr. STAPLES. None that I know of, sir.

The CHAIRMAN. Now, you were about to begin to tell us about this Richmond Stove.

Mr. STAPLES. Oh, yes.

The case is the Southern Stove Works, not the Richmond Stove Works.

The Southern Stove Works is a concern engaged in the manufacture of various types of heating equipment.

Now, in the early part of 1942 the War Production Board, in order to conserve the supply of iron and steel which was very critical at that time, issued an order which, to generalize, provided that no concern should manufacture grates except where the grate was made for the purpose of primary heating.

By that we intended to mean that you could use iron and steel to make grates for furnaces or for stoves where that was the sole source of the heat in the house; but we did not permit the manufacture of grates for fireplaces and luxury secondary heating.

Mr. ROBINSON. What in case the grates were necessary for the primary heating?

Mr. STAPLES. What is that, sir?

Mr. ROBSION. What if the grates were necessary for the primary heating?

Mr. STAPLES. We permitted that.

Mr. ROBSION. You did?

Mr. STAPLES. Yes. The Southern Stove Works, being apprised of this order, filed an appeal, and in this appeal they stated that they desired permission to make grates for primary heating purposes.

They did specify they were fireplace grates but they said they were for primary heating purposes.

The secretary of the appeals board, and by that I mean the appeals board of five that considers applications for relief addressed to the War Production Board—not the chief compliance commissioner—this appeals board wrote to the stove works and said “We won’t consider your appeal. It is not necessary to do so, because if you are making these grates for primary heating purposes you are entirely within the law.”

So there was no appeal accorded, as Mr. Smith said this morning.

A little later on we began receiving complaints from presumably law-abiding competitors that the Southern Stove Works were selling grates not for primary heating purposes but for secondary heating purposes; and that was called to their attention, and they then wrote a letter to the Plumbing and Heating Division of the War Production Board and asked for an interpretation of the order, mentioning this previous letter they had received from the secretary of the appeals board; and the fact being more fully brought out at that time, the Plumbing and Heating Division said to them “No, you cannot make the kind of grates you are making now because those are not for primary heating purposes.”

Now that letter, I believe was, sent out sometime in July or August of 1942. They had received this letter from the appeals board sometime in June of 1942. The opinions might be regarded as conflicting but the fact remains that to clinch matters, I believe in September 1942, we amended our general order which made it very clear that you could not manufacture fireplace grates, period.

Now, they claim that they were not aware—

Mr. ROBSION (interposing). That is, you could not make grates for the home for coal and have any other means of heat?

Mr. STAPLES. Not without specific permission of the War Production Board.

I am not discussing the advisability of that order but I am speaking now of our compliance proceedings.

The Southern Stove Works continued to make these fireplace grates after they had received the letter from the Plumbing and Heating Division and after the order had been amended.

Now, our charges against them were based upon their violations that occurred after the order had been amended.

It seems to me that by that time they ought to have been well apprised of the fact that this opinion, if you can call it such, that they got from the secretary of the appeals board, was not sound law upon which they could rely.

They were given a hearing before a commissioner, who recommended the issuance of a suspension order depriving them of priorities assistance for a period of time.

They appealed to the chief compliance commissioner, who issued the following order:

Southern Stove Works, Inc., has appealed from the provisions of Suspension Order S-201.

After reviewing the company's appeal it has been determined that the company was in doubt as to the effect of War Production Board orders upon its operations

during the period when its violations occurred and was not willful or culpably negligent in failing to ascertain the exact effect of such orders.

In view of the foregoing it is hereby ordered that the suspension be revoked.

Now, it seems to me we leaned over backward——

Mr. ROSSION. How long was that after——

Mr. STAPLES. That was March 20, and the suspension order was issued January 1.

In the meanwhile we gave them permission to move the grates which they had manufactured in violation of the order.

Now, it is true that for a time they were under suspension, but that was because they did not appeal promptly and did not ask for a stay.

We have a provision whereby anyone who has been suspended can apply for a stay to a commissioner; and he almost always grants it.

Mr. SPRINGER. Do you advise them of the rules?

Mr. STAPLES. Every time there is a hearing before the compliance commissioner, the respondent, as we call him, is given a copy of our rules of appeal, and they specifically provide that he can apply for a stay; and he is also advised of that by the commissioner.

We try to be just as fair in this as we can.

I personally review every recommendation that comes in from a commissioner.

We have quite frequently refused to follow the commissioner's recommendation, and I might add the commissioners frequently don't like it.

Mr. HOBBS. That must be done within 5 days, mustn't it?

Mr. STAPLES. No. You can appeal at any time.

Mr. HOBBS. No; I mean if you have to get a stay don't you have to appeal within 5 days?

Mr. STAPLES. No. You can get a stay at anytime.

Mr. GORSKI. Where does the 5-day provision come in?

Mr. STAPLES. That may be an O. P. A. provision, I don't know. The general counsel is here and can answer that question. I have an idea, though, that Mr. Hobbs is referring to the 5-day provision in the extension of the stabilization law which was passed last summer which provides, I believe, that there must be an appeal to the courts within 5 days after adjudication.

Mr. GORSKI. You have no limitation in this?

Mr. STAPLES. We have no limitation, and if the appeal is denied, it doesn't stop the respondent from appealing all over again if he wants to.

Mr. HOBBS. I also think, in testimony before our subcommittee, that Mr. O'Brien testified as to the 5-day limitation. That may be entirely wrong.

Mr. STAPLES. I don't recall such testimony.

Now, the other case——

The CHAIRMAN. Before you begin your other case, have you ever considered, in an ordinary supposed-to-be violation, that the person whom you suspect or believe has violated, should have a period of time in which to present his angle of the matter before his business is closed down or before the suspension is made?

Mr. STAPLES. Well, he has that opportunity.

The CHAIRMAN. Sir?

Mr. STAPLES. He has that opportunity, sir, before the commissioner.

The CHAIRMAN. Now, let us get that clear. Take this case that we

are talking about; you felt that they were violating your order, that they were not complying with what you required.

Now, in such a situation is it feasible to permit them a certain length of time, 4 or 5 days or whatever length of time you think is proper, to do something about it before the business is closed down—before you stop them?

Mr. STAPLES. Well, of course, you are assuming, are you not, that we intend to issue a suspension order which closes their business?

We do not do that.

The CHAIRMAN. Well now, let us see about that.

He is manufacturing grates. If you don't let him have anything to make them, why don't you close his business?

Mr. STAPLES. I am sorry, I was interrupted here, I didn't get your question.

The CHAIRMAN. Assuming, in this case, they are manufacturing grates; they have to have this material, this metal, which you control. Now then, if you issue an order which stops the use of that metal which they have to have to operate their business, why don't you close their business except for the sales they have on hand?

Mr. STAPLES. We merely deprive them of priority assistance.

The CHAIRMAN. What would they make grates out of except the material which you control? Do I make myself clear?

Mr. STAPLES. Perhaps you do. It is sort of a double question.

I might say that they are given an opportunity to appear before a commissioner. We don't tell them to come in the next day.

The CHAIRMAN. Before you stop the use?

Mr. STAPLES. That's right.

The CHAIRMAN. Let us get that clear.

Mr. STAPLES. They are sent a letter which advises them that our investigation indicates they have apparently violated an order. We don't say "You have." We just say it looks that way, and we advise them that the matter will be presented to a compliance commissioner of the War Production Board at a time "agreeable to you," and name the place where the commission ordinarily sits; and they are advised to get in touch with our regional compliance manager and arrange a date for the hearing which is mutually satisfactory to all concerned.

The CHAIRMAN. In the meantime, now, they may continue to operate?

Mr. STAPLES. That's right.

The CHAIRMAN. As they were operating as they were before you gave them this notice?

Mr. STAPLES. Of course, in most instances they stop their violations as soon as they get the letter, but we sometimes have to go into the courts and enjoin them if they continue to violate.

The CHAIRMAN. It don't seem to me we are getting together on this thing.

You send them a letter and that letter suggests to them that they get in touch with somebody connected with your organization and see about it?

Mr. STAPLES. No. They are instructed to—they are instructed that the matter will be presented to a compliance commissioner for a hearing.

The CHAIRMAN. What I am trying to find out is what has happened in their business between the time you give them that notice and the time they appear?

Mr. STAPLES. Nothing has happened.

The CHAIRMAN. You mean they can continue to get the material?

Mr. STAPLES. They can continue to get the material.

Mr. HOBBS. Can they get more materials?

Mr. STAPLES. Until we issue the suspension order they can get priorities assistance.

The CHAIRMAN. That is not the way I heard it.

Mr. STAPLES. Well, we sometimes issue suspension orders which tell people that pending investigation "You shall not do certain things," but those are few and far between.

The CHAIRMAN. "You shall not use this material or shall not use it a certain way?"

Mr. STAPLES. No, I don't think we ever issue a suspension order going that far.

Mr. SPRINGER. Ordinarily how much time elapses for him to appear before the commissioner?

Mr. STAPLES. Well, it may be a hearing will take place the next week; sometimes a month will elapse.

We try to have the hearing as soon as possible.

Mr. ROBSON. I understood you to say it is fixed by agreement?

Mr. STAPLES. That is correct.

Mr. SPRINGER. But I understood in this letter you send out you direct him to appear before the commissioner at a certain time and a certain date.

Mr. STAPLES. Oh, no.

The CHAIRMAN. Let me follow that. The hearing is had before the commissioner.

Mr. STAPLES. That is correct.

The CHAIRMAN. What happens then, what has to happen then before he is cut off from his supply of raw materials?

Mr. STAPLES. The hearing—we have the transcript—I haven't it here but there is a transcript made up of all the hearings.

The violator or the alleged violator is not presumed guilty until he proves he is innocent, as stated this morning. It is up to the War Production Board to prove these charges to the satisfaction of the commissioner unless they are admitted.

A transcript is made up of the hearing, the commissioner examines it, he prepares a report and recommendation similar to the findings of fact and conclusions of law of a judge. He sends that into Washington.

The CHAIRMAN. In the meantime his business is operating normally?

Mr. STAPLES. That's right.

The CHAIRMAN. At what time is he suspended from the right to get his raw material?

Mr. STAPLES. After the report and recommendations of the compliance commissioner have been reviewed in Washington we make administrative determination as to whether or not a suspension order will be issued, and we do not recommend or direct the issuance of an order which is more severe than that recommended by the commis-

sioner. Frequently we direct the issuance of a less severe suspension order.

The CHAIRMAN. Until that order is issued he continues to get his normal supply of raw materials?

Mr. STAPLES. That is correct.

The CHAIRMAN. And immediately upon the issuance of that order is it true that he can no longer get it?

Mr. STAPLES. No; as a rule the order is effective 7 days after issuance in the case of respondents east of the Mississippi and 10 days after issuance with respect to respondents west of the Mississippi, in order to give the respondents the right to apply for a stay.

The CHAIRMAN. Is that application made in court?

Mr. STAPLES. Made to the chief compliance commissioner.

The CHAIRMAN. To the chief compliance commissioner for a stay?

Mr. STAPLES. Yes.

The CHAIRMAN. Now, then, during the time, he continues to operate?

Mr. STAPLES. That's right, and if the stay is granted he may continue to operate.

The CHAIRMAN. Now, then, what happens after the Chief of the Compliance Division shall have approved the cutting off of his raw material?

Mr. STAPLES. You mean the chief compliance commissioner?

The CHAIRMAN. Yes; it is up to him now. He issues the order?

Mr. STAPLES. The order is issued at the direction of the Director of the Compliance Division and the Legal Division based upon the report and recommendations of the compliance commissioner.

The CHAIRMAN. Now, at what time does the party complained of have an opportunity to have access to the courts?

Mr. STAPLES. After he has appealed to the chief compliance commissioner and the chief compliance commissioner has determined that the suspension order should remain in effect, then the respondent may seek an injunction in court to restrain the operation of the suspension order.

The CHAIRMAN. Then in that event does the court ever enter a temporary restraining order against your organization?

Mr. STAPLES. In the one case in which an injunction has been sought a temporary restraining order was entered.

The CHAIRMAN. Ordinarily, however, your order of suspension goes in effect and remains in effect until there is some reversal of a court?

Mr. STAPLES. We have only had that one case, so I would say that ordinarily it does not. In the one case that went into court the respondent wasn't for one single second deprived from any material whatsoever.

The CHAIRMAN. In ordinary procedure how much time would elapse between your first communication to the manufacturer and this last act on the part of your organization?

Mr. STAPLES. It depends, of course.

The CHAIRMAN. I know it does.

Mr. STAPLES. I would say we average probably 6 weeks, 2 months, sometimes 3 or 4 months.

The CHAIRMAN. But anyhow in that 2 months there is no suspension of the opportunity to get the normal amount of raw material?

Mr. STAPLES. That's right.

The CHAIRMAN. Now, what was your question?

Mr. ROBSION. My question was, your first letter states this manufacturer is violating the law?

Mr. STAPLES. Oh, yes; it specifically tells him——

Mr. ROBSION (interposing). Now, you say 6 weeks or 2 months elapse and he can go on with his business and get his priorities, but if he is finally found guilty, why, he has been doing this all that time in violation of your order.

Mr. STAPLES. Oh, no; because the order has not been issued.

Mr. ROBSION. I am talking about up to the time when there is final action.

If it turns out you were right in the first instance and the manufacturer was wrong, that may cover a period of 6 weeks or 2 months, and he can go right on getting his priorities, but it is finally determined that he was wrong, that he was guilty.

Now, what is done to him for operating for that 6 weeks or 2 months?

Mr. STAPLES. Well, he is on notice of course that he is doing something wrong.

Mr. ROBSION. Well, what is done to him?

Mr. STAPLES. Well, our first effort is to stop the violation.

Mr. ROBSION. If he doesn't stop then what do you do?

Mr. STAPLES. We have to go into court and get an injunction if the violations continue.

Mr. ROBSION. The question is, what is done to him for what he has done himself wrongfully? In other words, he has been using this strategic material which he is not authorized to use. What is the penalty, for that 6 weeks and 2 months, what is the penalty?

Mr. STAPLES. Well, it depends to a considerable extent on what he has done.

If he has used more critical material than he was entitled to, then the suspension order will require him to reduce his quota in the future to make up for the excess use in the past.

Mr. HANCOCK. That is your newspaper case.

Mr. STAPLES. That's right.

The CHAIRMAN. A moment ago you spoke of violation of—did you say a fundamental order?

Mr. STAPLES. I though you were referring to our limitation and conservation order.

The CHAIRMAN. What is that order? This particular order you mentioned seemed to be an exception or some variation.

Mr. CRAVENS. This is different from a suspension order.

Mr. STAPLES. The suspension order in the Southern Stove Works was the one I was explaining. Now, the order that was violated was General Conservation Order M-126. That was the order which limited the use of iron and steel in fireplace equipment, including fireplace grates.

Do you get the distinction? Order M-126 is a general order applicable to all industry.

Mr. SPRINGER. Mr. Robsion asked what do you do as an agency to that fellow, undertake to do to him, for violating that order, not the suspension but the basic order?

Mr. STAPLES. In that particular case we deprived the Southern Works of priorities assistance.

In other words, we stated "You cannot use our preference ratings that we granted to you because you have abused that privilege."

Now, in addition to that—

Mr. ROBSION (interposing). Does that go beyond just the amount of material that he did use in violation?

Mr. STAPLES. In that particular case it is hard to figure out, the order having been revoked I am not sure exactly what—

The CHAIRMAN. Isn't this what you do, you just state "You cannot get any more; you have been violating on those fireplace grates and you cannot get any more?"

You don't give him opportunity, do you, to continue their use through a long period of time?

Mr. STAPLES. Yes. The particular order only operates for a period of—oh, by the way, it is March 1, 1943, to May 31, 1943. That is a period of 3 months.

We rarely issue these suspension orders for a period of more than 4 months.

The CHAIRMAN. Let us get right at it. They didn't get any material for 3 months, did they?

Mr. STAPLES. I am sorry, I don't quite agree with you. They simply cannot use any preference rating for 3 months.

The CHAIRMAN. I know, but you are using technical terms that we probably don't know. How much material did they get?

That is what we want to know.

Mr. ROBSION. They never got any.

The CHAIRMAN. After that did they have ratings?

Mr. STAPLES. I don't know. There are plenty of opportunities to get these things. You see, the War Powers Act provides that we can give priorities to delivery on certain types of material, and we can allocate certain types of material.

Now, that is the provision under which we issue these suspension orders, we deprive the violator, the untrustworthy person, of priorities assistance and we say "Now, deliveries to you shall not be accorded preference over other people."

Mr. WALTER. Without the priorities assistance they couldn't get any material?

Mr. STAPLES. I am not so sure of that.

The CHAIRMAN. Then what advantage is it to you?

Mr. STAPLES. Because it is an advantage to people to have the priorities.

The CHAIRMAN. Otherwise they cannot get the materials.

Mr. STAPLES. That is true.

The CHAIRMAN. I don't wish to argue with you.

Mr. STAPLES. I wish to state that this type of suspension order is the second type that we issue, as distinguished from the quota adjustment type.

It deprives him of the right to use our priorities assistance or allocation assistance to get materials where the commissioner has found that the person is untrustworthy.

The CHAIRMAN. Doesn't your control operate over all the material in the country, practically speaking, that he could use to make grates?

Mr. STAPLES. Well, I think that is correct.

The CHAIRMAN. Now, what is the use of so many words?

Mr. STAPLES. Well, there are a great many things that can be bought without rated orders; a great many things.

The CHAIRMAN. I am afraid I don't get you.

Mr. STAPLES. I say there are a great many things that can be bought without the necessity of having a preference rating on the purchase order.

Mr. JENNINGS. Not on steel grates or the material of steel grates or iron grates?

Mr. STAPLES. I think that is correct.

Mr. JENNINGS. Then the chairman is saying what is the use of all these words when what he is trying to do is to find the facts.

The fact is the stove company was shut off and there was no other place it could get its material.

Isn't that it?

Mr. STAPLES. I think that is the practical effect; for 4 months they could not get material.

I should say 20 days. It was only in effect for 20 days.

Mr. HANCOCK. How many criminal cases have you prosecuted?

Mr. STAPLES. We have referred, I think, 475 cases to the Department of Justice.

Mr. FELLOWS. What do you do to these fellows? You prosecute them, don't you?

Mr. STAPLES. Only where it is willful.

If we find it necessary, we can cut off his material and also prosecute.

Mr. ROBSION. What about these 475 cases; what happened to them?

Mr. STAPLES. We are always about 6 months behind.

I am not blaming that on the Department of Justice or our courts. You cannot get prompt prosecution. The court calendars are too involved.

I recall a case in Boston in 1942. I went there to assist the district attorney in obtaining an indictment.

It has not been tried yet.

Mr. HANCOCK. What is the percent of convictions in all the cases that are tried?

Mr. STAPLES. We have only lost 2 cases, and I think there have been approximately 200 guilty pleas or convictions.

The CHAIRMAN. Have you people any suggestions that you could make as to a possible amendment to section III that would not weaken your power to enforce?

Mr. STAPLES. Well, I will say this, that the amendment proposed by Mr. Smith which would deprive us of the right to issue suspension orders certainly would, in my opinion, and I say this sincerely, destroy our control completely. We might as well close up the Compliance Division if you could not deprive violators of materials and equalize the access to the use of material.

Mr. CRAVENS. He contends that you are not authorized—

Mr. STAPLES. He contends there is no specific authorization in the Second War Powers Act.

Mr. CRAVENS. I think he has in mind that you are imposing a penalty without any specific authorization.

Mr. STAPLES. I think that is his contention.

There is no dodging the fact it has the indirect effect of a penalty, but it is a practical situation we are facing, and a criminal prosecution will not restore material that has been diverted.

Mr. CRAVENS. But you could apply for an injunction.

Mr. STAPLES. But would that restore to this stock pile the amount of material they have used in excess of their quota?

We have, for example, certain chemicals that are so critical that we deal them out very carefully in individual cases.

Mr. CRAVENS. Well, I imagine the courts could base the injunction on the method you have stated, that restoration be made.

Mr. STAPLES. I am not sure that the courts have that power.

Mr. CRAVENS. Well, you have it. I imagine if you have it, the courts have it.

Mr. STAPLES. No. We have the right to allocate the material. And what we say is, "We are going to cut your quota in the future."

That is our exercise of the allocation power.

The CHAIRMAN. This question is purely explorative: The court would have to find out the whole amount of available material and the various people who wanted to get a part of it, and then determine whether Mr. A was getting his share, that quantity of which there was not enough for everybody.

Mr. STAPLES. That's right. The court would have to determine all of that.

Mr. CRAVENS. They have to determine that—

Mr. STAPLES (interposing). It would take quite a while too, and the critical nature changes from time to time.

It may be a suspension order which we issued 3 months ago would have no effect at the present time, or, vice versa.

You have got to act fairly promptly, and if these matters get into the courts—in the case where we were enjoined in issuing a suspension order the case was started in July of 1943 and the final decision of the court of appeals was not filed until October 1944; and as a matter of fact, the trial judge never filed his decision until February of 1944.

Mr. CRAVENS. You detailed awhile ago the various steps that led up to the suspension order.

Mr. STAPLES. Yes.

Mr. CRAVENS. And it is finally determined that—in your procedure you determine that the order should be made.

Then you say that the respondent has a right to go into court and apply for injunction.

Mr. STAPLES. Yes.

Mr. CRAVENS. Is that a right given him by law, or do you just say generally "you have that right."

Is there any specific authority in this?

Mr. STAPLES. I think it is just a matter of common law. The courts have never been loath to take jurisdiction, and we certainly have never disputed it.

Mr. CRAVENS. What is the attitude of the War Production Board when the respondent does go in court? Do you deny the jurisdiction of the court?

Mr. STAPLES. We do not deny the jurisdiction of the court.

The CHAIRMAN. Any further question, gentlemen?

Mr. HOBBS. Yes, Mr. Chairman. I wanted to see if I could get Mr. Staples to put into the record of this hearing the notice that you told us that is given to each alleged violator of his rights as to appeal or any other procedure that might be characterized as an appeal; and, second, I would like to have you put into the record in chronological order the actual orders, stays, changes, or what not in the *Southern Stove case*.

Mr. STAPLES. I have the published documents right here and will be very glad to show them to you.

Mr. HOBBS. No; I want them in this record.

Mr. STAPLES. Oh, I see what you mean. The reporter.

Mr. CRAVENS. They can be incorporated.

Mr. STAPLES. As exhibits?

Mr. HOBBS. Yes.

Now, the other thing I would like to ask you is, Who else, if anybody, that you know of in the Government service, issues these suspension orders besides W. P. B.?

Mr. STAPLES. O. P. A., War Food, I think; Petroleum Administrator for War—I am not positive.

Mr. CRAVENS. O. D. T.?

Mr. STAPLES. I believe O. D. T. I am not sure. I think O. D. T. does.

Mr. HOBBS. Now then, the question I want to ask you, do you think that they have exercised this power in substantial accord with what you have detailed as your practice? Or, do you know?

Mr. STAPLES. I cannot answer that question. I prefer not to. They are represented here and can answer it better themselves, it seems to me.

Mr. CRAVENS. You mean whether they all have about the same procedure?

Mr. HOBBS. Yes.

Mr. STAPLES. I would rather not venture an opinion.

Mr. HOBBS. That's all right. But you will put all these matters as exhibits with your testimony for incorporation into this record.

The CHAIRMAN. Now, in order to shorten the matter, while we have representatives of these other three agencies that have been enumerated here, each of them represented——

Mr. MICHENER. Before the witness leaves——

The CHAIRMAN. Yes.

Mr. MICHENER. Before the witness leaves may I ask this question, at the fear of repetition:

Now, personally, I am not so much interested in the details of these minor cases. I think we are dealing with a problem. I want enlightenment as to the fundamental things we are dealing with.

I don't care if there were a dozen stove cases and all the specific details, that is not germane to what we are after.

Now, the proposal is that we extend this War Powers Act.

Now, some abuses have possibly arisen by reason of administration along the lines suggested by Judge Smith. Now, how can we remedy that condition by amendment in the extension of the War Powers Act?

Now, if your group collectively can suggest to the committee an

amendment that will not destroy the usefulness and efficacy of your operation and at the same time guard against abuses that might happen, that is what I want.

Mr. STAPLES. Yes. Well, I do wish to say this, with all due respect to Judge Smith, this came as quite a shock to us because when he investigated W. P. B. he looked through all our suspension orders—he only found——

Mr. MICHENER. Now, wait. That is getting into things——

Mr. STAPLES (interposing). You said that Judge Smith had demonstrated abuses.

Mr. MICHENER. Well, assuming that he had.

Mr. STAPLES. Well, he boiled it down in the last analysis to five cases which we thought we had adequately answered before his committee.

He has never filed a report with Congress criticizing W. P. B. in any way.

Mr. HOBBS. Out of how many?

Mr. STAPLES. Four hundred and sixty.

Mr. MICHENER. I have had cases of copper—I am not finding any fault but I am familiar with some of these things—I think if I got into all the details of just the cases I have had, why, we would be here 10 years talking about the specific merits of little cases. I don't think we have time to do that.

Mr. STAPLES. Was there a suspension order issued against you——

Mr. MICHENER. No.

Mr. HOBBS. Now, here is something that struck me very forcibly. You say injunctive relief isn't worth anything.

Mr. STAPLES. Did I say that?

Mr. HOBBS. Not specifically, but the Smith committee says the same thing.

So both of you are in agreement, that injunctive relief doesn't solve the problem; so, therefore, the only resort to the court is absolutely worthless.

Now, is that a situation that ought to obtain? Shouldn't there be some way for redress of alleged grievances?

Mr. STAPLES. Well, I draw a different conclusion from that. It seems to me it is a pretty good indication there is no necessity for an appeal to the courts here when only one of our suspension orders has ever been questioned by recourse to the courts.

Mr. HOBBS. They say it is because the remedy isn't available, that the court is very slow to act, they are prejudiced in favor of the Government, that its action isn't in accordance with the need but in accordance with a predeliction against that type of case.

You come in here and you say if you cannot get action, your injunctive relief has been aborted. You say it is too slow; you say it won't do any good, that it doesn't aid you.

Mr. STAPLES. I am sorry, I think you are confusing my remarks on criminal prosecution.

Mr. HOBBS. No; I am not. I am talking about the injunctive process. You said you had that opportunity available to you, that is, where the alleged violator had continued to violate after the suspension order had been issued.

Mr. STAPLES. Well, I would like to correct the record then, because where the violations are continuing—and as a rule we have been able to stop them without resort to the courts—but where we have had to, we have found the courts quite anxious to assist us in issuing temporary restraining orders and injunctions.

Mr. CRAVENS. He said the injunctive process was not effective to restore back to the stock pile.

Mr. STAPLES. That's right. That is what I said.

The CHAIRMAN. You don't need the injunctive process to hold critical materials. The court cannot do more than that.

Mr. STAPLES. Take a man who is building a house in violation of our construction order. He has bought all the lumber; he has already bought it. We think it should have gone somewhere else.

You can buy lumber without rated orders. We want to stop construction. He won't stop when you tell him to. We have to go into court and enjoin him.

There is material that can be bought without priorities assistance. To a certain extent you can buy lumber, and it is very critical.

Mr. MICHENER. That is true. Taking your stove company, the oil stove. I have in mind they use a little copper ring that has to go on every oil burner, for the stove.

You make an order and you say they cannot manufacture any more of those stoves, even though they have the material there, and they shall not dispose of the material which they have to anybody else excepting by your order.

Now, the result of that is that here is a man, here is the factory, here are the orders, here is the material—all in the same room to make a stove out of; but when you issue that order to suspend manufacture, you say, "Don't use any more of your material; you cannot sell your material except—"

Mr. STAPLES. We don't any more.

Mr. MICHENER. I have had one.

Mr. STAPLES. I stopped that.

We have made mistakes in the past but I assure you, sir, we have never attempted recently to freeze things already made.

Mr. MICHENER. It was back in the general stove order, about the manufacture of stoves.

Mr. STAPLES. Was that a suspension order or a limitation order?

Mr. MICHENER. Well, I will not say any more because I am not familiar—

Mr. STAPLES. On this Southern Stove case we gave them permission to dispose of all the stoves they had manufactured. It would not make sense, of course, to freeze these materials.

Mr. HOBBS. And on appeal that restraining order was dissolved?

Mr. STAPLES. It was issued January 1 and did not go into effect until March 1, and it was revoked on March 20.

The CHAIRMAN. Suppose I ask the other gentlemen who represent the other agencies if the statement you have made as to procedure in your organization is substantially the same as the procedure in their respective organizations.

Mr. STAPLES. I believe they are represented here.

The CHAIRMAN. I was just afraid we might get crowded for time.

STATEMENT OF RICHARD H. FIELD, GENERAL COUNSEL, OFFICE
OF PRICE ADMINISTRATION

Mr. FIELD. Richard H. Field, general counsel, Office of Price Administration.

Insofar as it is possible to generalize and be accurate, I should say that in substance the procedures of the Office of Price Administration with respect to suspension proceedings follow the same general pattern as those described by Mr. Staples for the War Production Board.

About all I know of the War Production Board's procedures is what I have heard Mr. Staples say here.

I would be glad to go into as much detail as you wish at this hour as to our procedure.

The CHAIRMAN. I believe while you gentlemen are here that my colleagues might get all the picture in this afternoon.

Mr. FIELD. Our own procedure was gone into by the Banking and Currency Committee.

Our rules which set up the procedure appear in the record of the hearings of the Banking and Currency Committee last spring, and I will be glad, if you wish, to put them into the record for this committee.

The CHAIRMAN. How much space?

Mr. FIELD. We have about 28 pages in the appendix to the hearings of the House Banking and Currency Committee, pages 2433 to 2461.

This includes our procedural regulations, our own internal instructions, and our forms of notices and orders.

The CHAIRMAN. You exercise control over critical materials?

Mr. FIELD. The Office of Price Administration when directed to do so handles the rationing.

We only act when it is determined by the supply agency that there is a critical shortage.

We don't determine that; but we merely carry out the order to institute the rationing program if such order is given to us.

The CHAIRMAN. After you receive the direction then you proceed under your own steam.

Mr. FIELD. That is correct.

The CHAIRMAN. Practically the same procedure I assume as that which has just been stated. In what respects do you vary from that procedure?

Mr. FIELD. I can give you a few detailed differences.

I believe Mr. Staples said there is no time limit for appeals in W. P. B. procedure.

Our appeal procedure provides a 30-day time limit.

The CHAIRMAN. I think I can help you.

Here is a concern that is under suspicion for violating an order.

Mr. FIELD. What happens? Is that your question?

The CHAIRMAN. Yes.

Mr. FIELD. If our investigation indicates a violation, we give him a notice of a hearing which under our regulations is required to be at least 7 days in advance of the hearing and required to set forth specifically what the precise charge is.

He is notified to appear before a hearing commissioner, of which we have 24 throughout the country.

And normally those hearings are held in a place as convenient as possible for the respondent, that is, the commissioners ride circuits throughout their territories.

At that hearing evidence is presented by the attorneys of the Office of Price Administration; evidence is presented by the respondent and, of course, he has the right to be represented by counsel, and normally is.

It is all stenographically transcribed, a verbatim record is made, the hearing commissioner is required to make specific findings of fact and rulings of law; and then he may issue either an admonition, a suspension order, or a probationary suspension order.

The CHAIRMAN. All right. Now, assuming he issues a suspension order. What does he suspend and when does his order to suspend take effect?

Mr. FIELD. He suspends, normally, the right of the respondent to deal in the particular material with respect to which he has been found guilty of violation, for such period as he determines.

Mr. CRAVENS. When you say "deal" do you mean, to obtain? Would that be better to say "obtain" that material?

Mr. FIELD. The normal order forbids him from selling or acquiring. These are normally directives against dealers.

The CHAIRMAN. Could you have received a commission that would have given you jurisdiction over that stove concern at Richmond?

Mr. FIELD. We have no jurisdiction whatever over that.

The CHAIRMAN. In the scope of your authority you would not have received a commission to deal with that situation?

Mr. FIELD. No.

The CHAIRMAN. What do you deal with?

Mr. FIELD. We deal with the items which are rationed to consumers; gasoline, fuel oil, meats, some processed foods, although fewer than formerly; sugar, shoes, industrial rubber footwear, automobiles, tires, some types of stoves, and solid fuels in the Pacific Northwest. Rationing of bicycles, typewriters, and coffee has been terminated.

The CHAIRMAN. Let us take sugar, because it is all the same. Take sugar.

Here is a person who has some sugar and he is under suspicion for selling that sugar in too large a quantity to somebody.

Mr. FIELD. That is, selling other than in accordance with the ration regulation; maybe without stamps?

The CHAIRMAN. Too big a quantity would be a violation?

Mr. FIELD. The consumer is entitled to—

The CHAIRMAN. Well, I go in and get 4 or 5 pounds a week. Suppose I go in and get 50 pounds a week?

Mr. FIELD. If he sells you more sugar than you have ration stamps for, that is a violation.

The CHAIRMAN. Do you have jurisdiction over that?

Mr. FIELD. Yes.

The CHAIRMAN. All right. You hear that he has sold me 50 pounds. You come into the picture. Then you issue some notice of a hearing before this agent of yours who is to take the testimony?

Mr. FIELD. That's right.

The CHAIRMAN. They get together, testimony is taken, and a record is made, and upon that record there is the finding of facts and of law.

All right. Now then, that individual, does he have authority to issue suspension order there at that time, at the conclusion of the hearing, which would prevent the merchant from selling any sugar?

Mr. FIELD. He has authority to issue the suspension order. That order may not, under the—

The CHAIRMAN. That isn't what I asked you. I asked you the specific question if he has the authority to issue an order that he cannot sell sugar.

Mr. FIELD. He has authority to issue an order but that order cannot become effective for a period of 5 days and—

The CHAIRMAN. I know, and I will follow through and get to that 5 days. He issues that order?

Mr. FIELD. That's right.

The CHAIRMAN. Then it isn't effective until that 5 days. During that time he has a right to appeal to some other agency; doesn't he?

Mr. FIELD. During that time he has the right to do two things: one, to appeal to the Hearing Administrator in Washington who is the superior of the commissioner in the field; and, two, to apply for a stay of the effective operation of that order.

He may apply for the stay to the hearing commissioner who heard it; if he doesn't get that stay he has the right to appeal for his stay to the hearing administrator.

I might say that in the vast majority of cases the stay is granted.

The CHAIRMAN. Let us get to that point. A man makes an application within 5 days, but between the time when the hearing is concluded and something is done on his stay, is the order of the hearing agent in effect? Is the man stopped from selling during that 5 days?

Mr. FIELD. No.

The CHAIRMAN. All right. Then that's that.

Then he goes to this second place. He has a right to go there within 5 days. What happens there?

Mr. FIELD. There the record is read by the hearing administrator and the order may be affirmed, reversed, or modified.

The CHAIRMAN. Suppose it is affirmed.

Mr. FIELD. Your order may not be effective for a 5-day period, which gives him time to seek judicial review.

The CHAIRMAN. Do you mean may not, or shall not?

Mr. FIELD. It cannot. That is the provision of the Stabilization Extension Act to which I referred in the subcommittee the other day.

The CHAIRMAN. If you will leave it to me I will get through with this thing pretty fast.

Now then, nothing has happened. Two orders have been issued but nothing has happened to the man's business.

Mr. FIELD. The man is still selling sugar.

The CHAIRMAN. All right. Then what happens?

Mr. FIELD. If he seeks judicial review—the statute provides, incidentally, that he may get interlocutory relief from the court only by consenting to an order that he will not violate the regulation further while the case is pending.

The CHAIRMAN. Can you issue an order other than the order governing the rationing of the commodity, the general order governing the ration of the commodity?

Mr. FIELD. I am not sure I understand your question.

The CHAIRMAN. All right. Here is a man who has the right to sell me 5 pounds or any other person 5 pounds of sugar. He enters into a stipulation that he won't violate the order, but can you issue another order different from the general order under which he is carrying on his business?

Mr. FIELD. I take it that we have no power as a matter of administrative law generally to make variations for particular cases of the terms of a general rationing order.

The CHAIRMAN. What is the purpose of having him enter into a stipulation that he won't violate something that he never did have the right to violate?

Mr. FIELD. That gives the quick remedy of contempt, I suppose.

The CHAIRMAN. But you are not in court, are you?

Mr. FIELD. We are in court at the point to which I understood your question to be directed.

The CHAIRMAN. I haven't got them into court.

Mr. FIELD. I think I got myself in court. I say after the hearing administrator's order, the final order—

Mr. ROBSON. Affirming.

Mr. FIELD. Affirming. We will assume that the order has been affirmed. Then there is a 5-day period during which, under the law, it cannot become effective. And during that time he may go into court, and during that time the court may enjoin the enforcement of the suspension order, but only if the man files a stipulation that he will not violate further while the case is pending in court.

Mr. HANCOCK. What is the use of it?

Mr. FIELD. That is while the case is pending.

Mr. MICHENER. To me it seems clear.

The CHAIRMAN. When the court gets into action what is the scope of its inquiry initially?

Mr. FIELD. The court has before it the stenographic record of the proceedings before the hearing commissioner; it has before it the findings of fact and conclusions of law of the hearing commissioner; it has before it the findings of fact and conclusions of law of the hearing administrator on appeals, and the court reviews the entire record, determining whether there was evidence to support it, whether the proceedings were fair, whether the order was arbitrary or capricious.

Mr. FELLOWS. Is that the Emergency Court of Appeals?

Mr. FIELD. No. That is any Federal district court. The Emergency Court of Appeals handles only cases arising with respect to the validity of price-control regulations under the Price Control Act.

This is wholly under the Second War Powers Act, and the Emergency Court of Appeals has no authority in connection with that.

The CHAIRMAN. The court gets this record. Does the court then base its determination upon the finding of facts of the examiner? The court takes no additional testimony? May the correctness of the finding of the commissioner be challenged in court, in practice?

Mr. FIELD. I would say that is comparable to what Mr. Staples described as W. P. B. procedure. There is not a hearing de novo in the district court.

The CHAIRMAN. Can you answer my question?

Mr. FIELD. I take it that what the court does in that proceeding is to determine whether findings of fact made by the commissioner are,

in the judgment of the court, warranted by the evidence appearing in the record before it.

The CHAIRMAN. Do you think in that case the court goes into an examination of the evidence? Can the court in that situation pass upon whether or not the respondent had a fair opportunity to present his side of the case?

Mr. FIELD. Oh, yes; of course. That is certainly before it.

The CHAIRMAN. Yes.

Mr. FIELD. The only thing that the court does not do is, first, it does not hear new evidence; two, I take it it does not substitute its judgment as to whether it would believe this set of testimony as against that set of testimony.

The CHAIRMAN. You don't have that situation where the court feels bound to decide with the agency?

Mr. FIELD. I should say if the court finds there was substantial evidence to justify the findings of the commissioner it would be bound to support it.

Mr. FELLOWS. Is it somewhat analogous to a court looking into evidence to determine on a jury's finding?

Mr. FIELD. Yes.

Mr. FELLOWS. Have you any instance where the court set aside the findings and conclusions reached by these hearing commissioners in your set-up?

Mr. FIELD. Well, the number of cases which have gone to court are very, very few.

It is my recollection there is one case, I think from South Carolina—I can check it and advise the committee later where it was held—that the findings were not supported by the evidence, and enforcement of the order was enjoined.

Mr. FELLOWS. First, it would have to find that there was no evidence?

Mr. FIELDS. Not no evidence. They must find that there was substantial evidence.

Mr. FELLOWS. Those hearings have about the effect that a jury's verdict has?

Mr. FIELD. Yes.

The CHAIRMAN. Who here represents any other agency?

Mr. FIELD. May I make one brief statement before I leave?

The CHAIRMAN. Yes.

Mr. FIELD. I would like to corroborate what Mr. Staples said as to what O. P. A. judges is the extreme importance of having this administrative process available to it.

We have roughly a thousand cases a month before our commissioners. We feel particularly with respect to gasoline where the majority of the cases arise, that the administrative right to refrain from allocating to a person who is dissipating this gas supply is absolutely essential to the securing of equal shares for everybody; and I think as far as the Office of Price Administration rationing is concerned that the amendment which the Congress put in in the spring providing for this judicial review is an adequate check against abuses.

We know that there have been mistakes in individual cases; I am afraid there will continue to be.

I hope that those are either caught in our own administrative appeal or checked by the courts.

The CHAIRMAN. You feel that if you had to wait for any judicial determination it would be too late to do the job?

Mr. FIELD. I think that is true.

Mr. ROBSION. What percentage of these cases reach the court?

Mr. FIELD. What percentage?

Mr. ROBSION. Yes.

Mr. FIELD. I would like to ask Judge Ferguson, the hearing administrator, if he can answer that.

Mr. FERGUSON. A very small percent.

Mr. JENNINGS. I don't believe I have ever heard of any meritorious complaint about the sale of gasoline. Ordinarily when a fellow gets to bootlegging gasoline there is something wrong about that, he is just a bootlegger, but I have never heard of any complaint about that.

The CHAIRMAN. Is that against the law in the country you and I come from?

Mr. JENNINGS. Yes. Against the law but it happens quite frequently.

The CHAIRMAN. Let me hurry along.

I think we have gotten your view.

Mr. FIELD. I think in reply to the last question—we have, I know, the overwhelming support of the responsible gasoline industry itself to do this job.

The CHAIRMAN. You know that.

Mr. FIELD. I have never heard any complaint about that.

And the counterfeiting situation, I am happy to say, isn't as bad as it was, but it is still a very tough job.

Mr. LEWIS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Certainly.

Mr. LEWIS. On this original hearing after you have notified the man that there has been a complaint made that he is violating your regulation, your order, who puts on the first testimony in that original hearing?

Mr. FIELD. The enforcement attorneys of the Office of Price Administration. We have the burden of going forward, the burden of proof.

Mr. LEWIS. Is that true in your case?

Mr. STAPLES. In W. P. B. we have the burden of proof.

Mr. FIELD. The one thing that is different with us possibly, the Office of Price Administration's attorney also has the right of appeal.

The CHAIRMAN. We have about 5 or 10 minutes. Are you getting ready to leave us?

Mr. ROBSION. I am leaving now.

Mr. FIELD. I have the decisions which I will either submit orally or in a letter, whichever you prefer.

It will only take a moment if you want me to give them now. I will be glad to.

In the 6 months from March to August, which is the most recent compilation we have, out of a total of 6,081 cases which were heard by commissioners there were 198 appeals.

I might say that many of those cases below resulted in consent determinations.

In that same 6 months—and these figures don't quite jibe because of a carry-over—there were 244 appeals disposed of by the hearing administrator—80 were affirmed in toto; 40 were reversed; 112 were modified; and 30 were withdrawn or dismissed, presumably by consent.

On those modifications that would vary from a very minor formal modification to a fairly substantial one.

If you are interested in more detail as to what that constituted, Judge Ferguson can give it to you.

The CHAIRMAN. On these appeals that come to Washington, I suppose the matter is taken up on the record?

Mr. FIELD. Ordinarily it is decided on the record and briefs. There is no need for the respondent to come to Washington.

The CHAIRMAN. Who represents either of these other four agencies? Anybody representing either of them? (No response.)

Is there any further testimony, gentlemen? If there is no further testimony—

Mr. LOMBARD. Mr. Chairman, could I say one point about the War Production Board?

The CHAIRMAN. Yes.

FURTHER STATEMENT OF LAURENCE M. LOMBARD, ASSISTANT GENERAL COUNSEL, WAR PRODUCTION BOARD

Mr. LOMBARD. To follow up what Mr. Field has said about how important they consider this power of issuing suspension orders as part of their allocation power, they say they have about a thousand cases a month. We don't have anywhere near as many cases. We don't come in contact at the consumer level so much. I suppose we have about 50 hearings a month on the average. But they are terribly important to us at the same time because our orders are probably—generally involve larger amounts of material, critical materials that are being used by manufacturers.

The tremendous majority of American industry is making every effort to comply with orders and regulations issued by the War Production Board, which they feel are necessary in the war. Unless we have the right to issue the suspension order to withhold the material from that small percentage which take advantage of the situation and disregard the law, after the careful showing of facts which they have the opportunity to present, why, it is discouraging to those concerns which are making every effort to comply, and are being adversely affected by our general orders.

The CHAIRMAN. What you are about to say is it would injure the morale of the whole outfit and make it very difficult and somebody would feel the other fellow was getting the best of what he ought to have a share of?

Mr. LOMBARD. Yes. The Banking and Currency Committee has already put into the O. P. A. statute a requirement of court review.

We don't feel that is necessary, but if the committee does feel it is necessary, we don't feel it would seriously hamper our operation.

I have spoken to Mr. Field about it, and they are already subject to it. It will make ours and theirs the same.

The CHAIRMAN. Under what circumstances would you permit court review, at what point in the proceedings? You gave us a statement off the record on that point.

Mr. LOMBARD. We would suggest in the same manner that it is now present in the renewal of the Price Stabilization Act.

In other words, after an appeal from a suspension order has been denied and the suspension order is about to become effective.

The CHAIRMAN. Would you give the right to court review prior to the time what you have done goes into effect?

Mr. LOMBARD. Yes, sir.

The CHAIRMAN. Well, now, that is definite.

Mr. LOMBARD. That is the same as what they have. As I say, we would prefer not to——

The CHAIRMAN. Would you give to the person who is dissatisfied with what you have determined the opportunity to go into court before what you have determined becomes effective and operates upon him?

Mr. LOMBARD. Yes.

Mr. FIELD. That does not mean, I take it, Mr. Chairman, that we would necessarily await the determination of the judicial proceeding.

The CHAIRMAN. But would you let him get into court and appeal to the court, would you give him an opportunity to get to court and have his appeal to the court to stop you from doing this thing before you would be able to do it?

Mr. FIELD. Yes, sir.

Mr. LOMBARD. We would suggest on the same terms that it now appears in the Price Stabilization Act.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. FIELD. If I could make one other comment, in addition to these thousand a month suspensions, we have had some 75,000 to 80,000 local rationing board revocations of motorist's rations, and I think it would be terrible for the morale, not merely for the motorist who plays by the rules but for the boards, if they were powerless to take away an allocation from one who misused it.

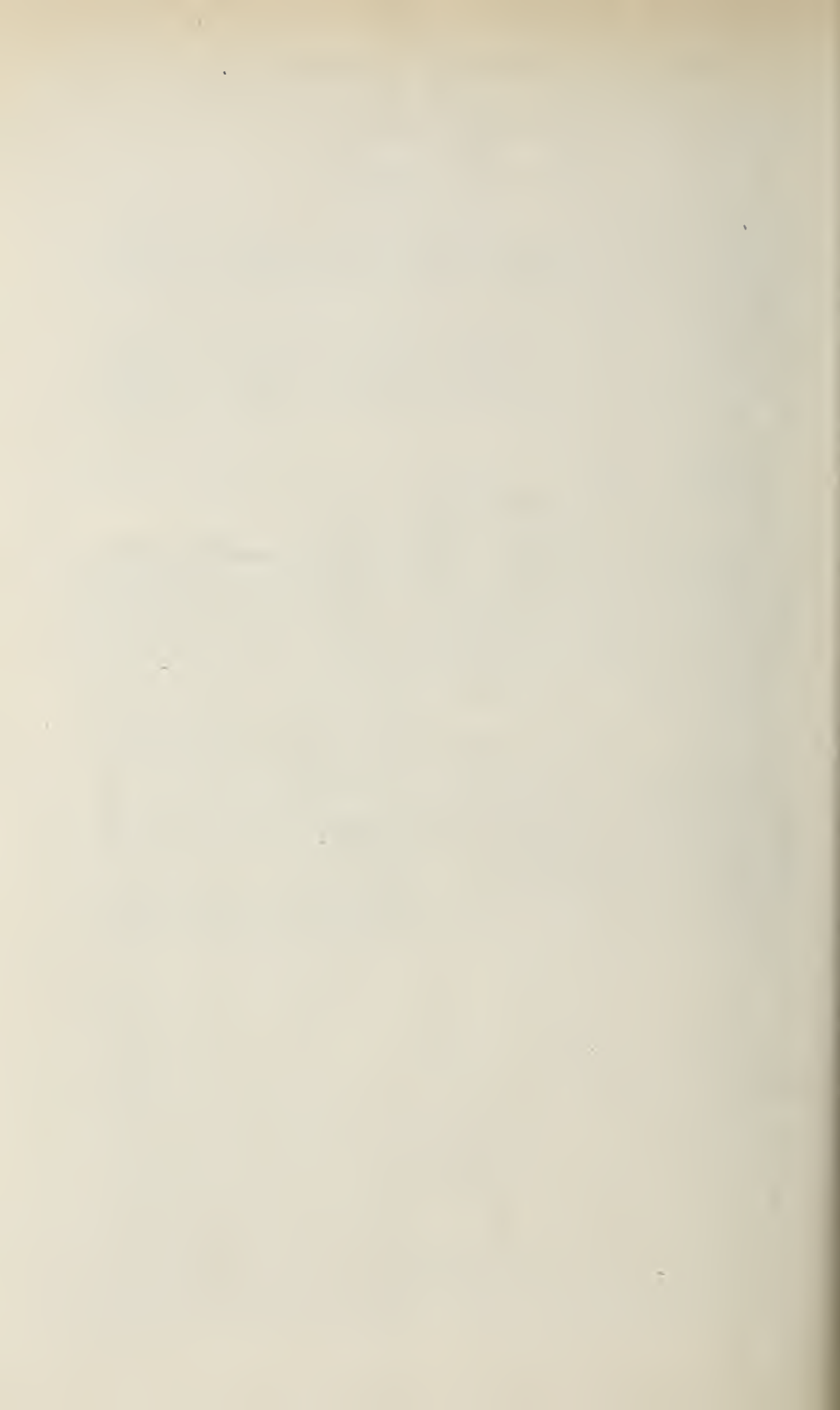
The CHAIRMAN. You don't have much complaint about what the neighbors do?

Mr. FIELD. Almost none, but their power to do it is dependent on the right to issue suspension orders which we are discussing here——

Mr. LOMBARD. I would appreciate the opportunity of sitting down with your legislative counsel.

The CHAIRMAN. Mr. Hobbs, I know, will give you that opportunity. His committee has had the initial responsibility of this thing, and I know he will be glad to do so.

He will not only give you the opportunity, but he will appreciate it. (Whereupon, at 5:20 p. m., the committee adjourned subject to the call of the Chair.)



TO AMEND AND EXTEND THE SECOND WAR POWERS ACT, 1942

MONDAY, NOVEMBER 27, 1944

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

(The committee met at 10 a. m., Hon. Hatton W. Summers (chairman) presiding.

Mr. HOBBS. I asked some of the gentlemen from the departments affected to come here this morning, but I did not expect them to be in the room while we were discussing the bill among ourselves, so I think they might step out until they are called.

(The committee proceeded to the consideration of business in executive session, after which the following occurred.)

Mr. HOBBS. I think we might hear Mr. Staples first before the others come in.

The CHAIRMAN. Very well.

STATEMENT OF LORING M. STAPLES, ASSISTANT GENERAL COUNSEL, WAR PRODUCTION BOARD

Mr. HOBBS. Mr. Staples, I would like to have you explain why the War Production Board and any other agencies would object to Mr. Walter's amendment to the proposed amendment, which provides that the district courts of the United States are hereby given exclusive jurisdiction to enjoin or set aside, in whole or in part, any order suspending any priority or allocation, and then adding the words proposed by Mr. Walter: "And failure or refusal to grant allocations."

What is the objection to that language?

Mr. STAPLES. It certainly is objectionable, gentlemen, for a number of reasons, and I do not know whether I am the proper party to appear and discuss that question with you, because my field is largely compliance work, but we have men here representing the Department of Justice and the War Production Board and the Under Secretary of War's office, who are much more cognizant of the effect of the amendment on administration and operation than I; and incidentally, if there is any danger of this amendment being adopted I would like to have the opportunity to bring in Mr. Krug, Mr. Forrestal, and Mr. Patterson, because they are very much concerned with the possibilities that might ensue if this amendment were adopted.

I can say briefly that we are operating as a business concern when we allocate materials and grant priority assistance. It is not a question of suspending people for past violations. Concerning that

particular amendment I believe we have stated we have no objection to the courts reviewing any action which we take in suspending or withdrawing priorities or allocation assistance. But when it comes to dividing up the available stock pile of critical materials the proposed amendment would substitute the opinion of the court for the decision of the Administrator of the particular critical material involved.

Mr. WALTER. Suppose the amendment did not go that far; suppose the amendment should only reach those cases where one business concern had been given an improper advantage over another would you be satisfied with such an amendment?

Mr. STAPLES. No; I do not think so, for this reason—

Mr. KEFAUVER. Suppose the word "capricious" were inserted before the proposed language, would that meet your objection?

Mr. STAPLES. I do not think so, because do you not think everyone who did not get as much gasoline as he thought he should have, would immediately charge the rationing board with being capricious?

Mr. KEFAUVER. I guess he would.

Mr. JENNINGS. Let us take this case: Here are two reputable concerns, business concerns, both of them in business before 1940, and both of them wanting to hold the good will of their trade, and to serve the trade if they are called upon by it; and one of them is given 100 shotguns and the other gets none, both of them are in the same town, serve the same territory, and are competing for the same business. What do you think about fellows of that kind coming into court and asking for a square deal? Why should not one ask for 30 shotguns instead of giving all of them to his competitor?

Or suppose there is a dairy delivering dairy products, including milk, over a certain route, and he gets no gasoline and his competitor gets all he wants. Do you not think he ought to have a remedy, to go into court rather than having to stand by and see his business destroyed?

Mr. STAPLES. Well, certainly in times of peace there would be no shortages of materials to be dealt with, and of course I agree with you that any such action would be discriminatory.

Mr. WALTER. What about the situation when the war is going on?

Mr. STAPLES. Because the materials from which shotguns are made are going to the military.

Mr. WALTER. But why should one party get all of the excess material and his competitor get none?

Mr. JENNINGS. That happened; and I know that took place in my section of the country, where one concern was allotted 100 shotguns and his competitor got none.

Mr. RUSSELL. Maybe the question of laches was involved.

Mr. JENNINGS. No; it was not.

Mr. RUSSELL. That is, the first come, first served.

Mr. JENNINGS. Well, they ought to have the same treatment at the same time.

Mr. RUSSELL. Is that not right, Mr. Staples; does it not necessarily follow that you grant the applications for priority as they come in?

Mr. JENNINGS. No.

Mr. STAPLES. Not necessarily.

Mr. RUSSELL. I do not see how you could handle it otherwise. You might have to wait for 2 years for orders or applications for priority to come in.

Mr. MICHENER. It might happen that the shotgun manufacturer on the one hand had a certain amount of materials to start with, certain stocks on hand and the order permitted him to use up his stock to that amount.

Mr. JENNINGS. No; not in this case.

Mr. MICHENER. If the one shotgun concern had plenty of stock with which to make the 100 and the other did not have any stock——

Mr. JENNINGS. That is not the complaint; the complaint is that they just arbitrarily gave to the one and not to the other.

Mr. WALTER. Would you be opposed to language in this amendment to meet a situation that the applicant is told that if he will retain a certain lawyer he would be able to have his application acted on favorably?

Mr. STAPLES. It would seem to me, Mr. Walter, that is a matter that should not be considered in this particular act. If there is some criminal activity in a Government agency whereby there is collusion between a lawyer and the administrator issuing the order, there should be an investigation and criminal prosecution. Now what you gentlemen are in a sense saying is that we are making business mistakes down there, that we are giving too much to A, and not enough to B, but please remember that there is not enough to go around, and let us assume, for instance, we only had 100 shotguns and both A and B applied, and that all of them were given to A, as you say, arbitrarily.

Mr. JENNINGS. Yes.

Mr. STAPLES. Let us assume that is the situation; how is the court going to correct it? Suppose the court says you must give to B; that you have given all the shotguns to A, therefore he orders the War Production Board to give them, or part of them, to B? But we do not have any more shotguns to give.

Mr. JENNINGS. But that is not the case here. Let us assume there is arbitrary, capricious, and possibly corrupt action on the part of the particular official.

Mr. HOBBS. What you are saying is that the second man could not have another 100?

Mr. STAPLES. No.

Mr. HOBBS. What he is asking is that each of them be given 50.

Mr. JENNINGS. Yes.

The CHAIRMAN. Let me ask you this question: Could any line of cleavage be effectively established between the activity of your organization of the materials and production of things for war purposes and those that are essential in the civilian supply?

Mr. STAPLES. No.

The CHAIRMAN. You do not think that could be done?

Mr. STAPLES. It would be impossible. We had that situation up, I understand, before I came here, and there was an attempt made, I recall, to break down the distribution of copper to determine how much of it should go into the civilian supply and how much to the military, and it was found impossible to ascertain where the copper was going as between the civilian and the military.

Mr. JENNINGS. In cases of that kind I would not expect the same action.

The CHAIRMAN. Let us follow this through a little further: You say that it is not possible. I would like to get your idea on this: Why is it necessary, if you have allocated to war activity all the materials necessary to meet the war needs, as to the excess materials, why should not a business concern or private individual not have a right, or some resort to the court to try the question as to dividing up the excess among themselves? Do you get what I mean?

Mr. STAPLES. Yes.

The CHAIRMAN. We have had cases mentioned here like the one Mr. Walter has referred to, where one concern was making toys which it sold to a chain store, and in making the toys it needed a little chain in order to complete the toy, and it was denied the material necessary to make that chain, and yet it is in competition with another concern which was permitted to get the material, and was enabled to take business away from the chain stores which the first concern had enjoyed.

Mr. STAPLES. Under those circumstances the thing to do, it seems to me, would be for the person who feels he is being discriminated against to come before someone in the War Production Board and make his complaint. And for that matter, we do have Congressmen as well as businessmen dropping in all the time to find out why this or that situation has occurred.

And if we find anybody on the Board who is, let us say, colluding with some lawyer and who is actually acting in a discriminatory way, the thing to do is to get rid of him. He is just a man that we do not want.

But we cannot avoid occasionally making mistakes; the War Production Board is a big organization, and makes mistakes, and I do not doubt there are a great many occasions where people have deliberately favored one concern over another, but if we know about it we will take measure to right the situation and get rid of the undesirable employee.

Mr. WALTER. Have you not had cases in the War Production Board where representatives of business work for the War Production Board and have shown favoritism to the company they have been connected with?

Mr. STAPLES. Well, I do not like to point them out—

Mr. WALTER. You need not do so.

Mr. STAPLES. I think undoubtedly such instances have occurred, and I believe the Truman committee was investigating the Printing and Publication Division, and as a result of its investigation two men resigned, were requested to resign, and we did not wait to find out what the record was.

Mr. WALTER. When such a case arises do you not think the person who is being discriminated against ought to be entitled to go into open court and bring all the newspapers and everybody else who is interested, and tell what he knows is happening and why he is being put out of business?

Mr. STAPLES. I think under those circumstances the War Production Board ought to right the situation within its own organization. And I think we are making every endeavor where we have found mistakes have been made—and we welcome any information on the part of anyone concerning any mistakes that we make in our activities, or are

made on the part of our employees. We certainly do not want to make them.

For instance, we found upon an investigation in New York a case where employees accepted a bribe and they were let out immediately. The point is, there is no necessity of going into court to have their actions reviewed. They are summarily discharged; we attempt to right the mistakes.

Mr. WALTER. Unless the man who has the discharging power might be in on the collusion.

Mr. STAPLES. I do not think we are quite as bad as all that, Mr. Walter.

Mr. WALTER. It could happen?

Mr. STAPLES. I think we have a rather responsible organization, Mr. Walter, and I do not think that is likely to occur.

Mr. KEFAUVER. Mr. Staples, Judge Sumners asked you whether it would be possible, for instance, in the case of steel where the war requirements are 90,000,000 tons, and as to the other 30,000,000 tons that might not be required for war purposes at the time, to try to find out if the 30,000,000 tons could be divided up among the civilian requirements and be equitably distributed. You do not think that is possible?

Mr. STAPLES. I do not see how it is possible.

Mr. KEFAUVER. And it is not possible for the reason, I suppose, that a part of the iron, for instance, that goes into the war effort and the part that goes to civilian supply cannot be divided?

Mr. STAPLES. No. There are big things, like component parts. For instance, small horsepower motors and things of that kind are required both on the part of civilian and the military and it is almost impossible to determine where the dividing line should be, particularly when you are assembling equipment of units that can be used either for the military or civilian.

Mr. KEFAUVER. I can appreciate that.

Mr. HOBBS. On that same situation, suppose I think I need desperately a truck and suppose I apply to the War Production Board for permission to buy one and am denied, what remedy do I have?

Mr. STAPLES. I cannot speak for the O. D. T. My recollection of the testimony here is to the effect that you have the right to make an appeal. You may recall the gentleman who testified on behalf of the O. D. T.

Mr. HOBBS. Well, suppose we leave out the O. D. T. and take some other organization.

Mr. STAPLES. Let's take another type of material; for instance, newsprint.

Mr. HOBBS. Yes; or any other item.

You are not dealing with trucks.

Mr. STAPLES. No; we have delegated our rationing power over trucks to the O. D. T.

Mr. HOBBS. Yes.

Mr. STAPLES. Let us take newsprint, for example, where we know what the available supply is. It varies from time to time, but generally speaking we know the amount that is to be divided up. We have put into effect a general order which provides, with respect to newsprint, let us say, that the newspapers can only use a certain

percentage of the amount of newsprint which it used in the basic year of 1941; that is their quota, and of course it will vary from time to time as conditions change.

That is another reason why a court review would be pretty nearly impossible because the quota of newsprint is considered quarterly, and it might be increased or decreased in the next quarter when the court was hearing the case.

And in the case of chemicals, and I believe rubber, the allocations are made monthly; sometimes I believe on a weekly basis, and if the court were to attempt to hear a case in August, say a month after the action was taken, the condition might be entirely different.

Mr. WALTER. Let us go back to the newspapers for a moment.

Mr. STAPLES. Yes.

Mr. WALTER. Suppose you made your allocation, say, to the Philadelphia newspaper, the two newspapers being the Record and the Inquirer. Suppose you allocated all of the paper to the Philadelphia Inquirer and none at all to the Philadelphia Record.

Mr. STAPLES. That is not possible.

Mr. WALTER. It could happen, could it not?

Mr. STAPLES. No; it is not possible.

Mr. WALTER. Why?

Mr. STAPLES. What we have done is to say to the two newspapers that each shall be entitled to the same percentage of the amount of newsprint it used in the basic period 1941. Now let us assume that one newspaper had increased its circulation and claimed it was entitled to obtain more than the quota established for the newspaper trade. Under those circumstances it would file an application with the Printing and Publication Division, and if such Division refused to grant the additional quota of paper then it would have the right to appeal to this 5-man Appeals Board, which would determine finally whether or not the newspaper asking for the additional quota over and above its average was entitled to it.

Now assume that in the case of paper A the additional quota is granted and in the case of paper B no additional quota is granted. I gather you would permit newspaper B to come into court and question that action as discriminatory. But the excess quotas are taken out of a reserve we have set aside for that purpose, and once we have allocated all of this reserve paper there is not much we can do or the court can do to change the allocation that has been made in that particular quarter.

Mr. WALTER. Let us assume that the business of the newspapers has increased and they want to have their quotas increased, but because you are a Democrat you decide, or your department decides in favor of the Democratic paper as against the Republican paper. Is there anything that would prevent that?

Mr. STAPLES. I would say under those circumstances there ought to be a congressional investigation; and certainly there should be an investigation in the War Production Board, and I assume, of course, that we will make them.

Mr. WALTER. Well, I am not assuming anything of the kind; I am assuming that we are dealing with men, and I have had considerable experience with the frailty of men who are administering the laws.

Mr. SPRINGER. Do you not think a provision ought to be written into the law so that people have the right to go into court under circumstances of that kind?

Mr. STAPLES. I very definitely do not think so, and if you have any idea of passing any such amendment I think you should listen, as I said, to the Army and the Navy, and perhaps the Department of Justice who are very much concerned in this.

The CHAIRMAN. Suppose we have the representatives of the different agencies come in.

Mr. STAPLES. Yes.

STATEMENT OF JULIUS H. AMBERG, SPECIAL ASSISTANT TO THE SECRETARY OF WAR

The CHAIRMAN. Gentlemen, you are in a hurry and everybody is in a hurry. I assume that you know what the committee is now considering, and that is the proposed amendment to permit a person who feels himself to be aggrieved by reason of the fact that his application may have been denied for materials; and the proposed amendment permits a resort to courts for relief. I do not know whether you have or not, but I assume you have seen the amendment offered by Mr. Walter.

Mr. AMBERG. No.

The CHAIRMAN. Suppose you read the proposed amendment, Mr. Hobbs.

Mr. HOBBS (reading):

That the district courts of the United States will be given exclusive jurisdiction to enjoin or set aside in whole or in part, any order suspending any priority or allocation or denying any stay of any such suspension that may have been issued.

And then, after the word "allocation" would be inserted the words "or failure or refusal to grant allocation."

In other words, on the suspension order we are granting, in this blanket amendment, the right to the individual to injunctive relief, and we are considering now this amendment, in addition to that, not only that the suspension order may be enjoined but the failure or refusal on the part of the agencies that grant the allocation.

The CHAIRMAN. We understand that the War Department has some definite views with regard to that, and whichever of you gentlemen can favor us with an indication of the views of the War Department or the position of the Navy Department, the committee will be glad to hear.

Mr. AMBERG. Mr. Chairman, I am Julius H. Amberg, special assistant to the Secretary of War.

Judge Patterson, the Under Secretary of War, I believe addressed a letter to you this morning in connection with the War Department's interest in not having judicial review of the allocation of materials. I am not here to speak about the judicial review of suspension orders; that is a matter which I do not think concerns us. But, the review of allocation of materials would mean that the several district courts could, in effect, under such an amendment, decide upon what is necessary for the prosecution of the war and what particular components or products might be necessary; and that is an over-all matter which, un-

der the present law, and, for that matter, under prior laws passed in 1941 and with somewhat less power in 1940, covers a matter that has been given to the War Production Board to decide for the period of the war; that is, to determine upon the allocation of materials, because we are only one of several claimant agencies; and if there is only a pile of so much copper or so much of a particular type of material needed to fabricate an article, we in the War Department cannot say as to what it must have or can have.

The War Department does put in its requirement and says this is what we need, and the Navy Department also puts in its request, as does the Maritime Commission, and likewise requirements for certain essential civilian supplies are submitted, and while we contend, in the War Department, that our needs are paramount, we also realize that some agency must finally decide the matter as to how much we get. The industrial mobilization plan of the War Department and the Navy Department, submitted in 1939, after thorough deliberation, provided for some independent body, like the War Production Board, to actually make the allocation of materials to be used for war, either by the Army, the Navy, or anyone else, as well as for civilian purposes.

Now this is the absolutely essential key to our going ahead with war production.

We have received a request for an increased production, within recent months, for example, of artillery ammunition, and more recently for small arms ammunition that will call for the use of certain materials and for the allocation of material, for instance, copper and so forth. Certain facilities will have to become activated, for example, in that regard, and our requirements are stated to the War Production Board as to the materials, and it allots the materials to us, our part, necessary for that program, and that necessarily means that there is going to be less to give to somebody else.

Now if a review of that is opened up in the several courts of the country on the application of any person who felt he ought to have more copper, for example, the court would be compelled to go into the whole war-production problem. We would run into administrative difficulty if they examine into such questions as where we place our contracts, whether with the right company, or how much material is allocated, and the whole system would fall into chaos.

Mr. WALTER. Of course, we recognize all of that and the only thing we are dealing with here relates to excess materials.

Mr. AMBERG. That not needed for the war effort.

Mr. WALTER. For war production.

Mr. AMBERG. Yes.

Mr. WALTER. Not needed for war production.

Mr. AMBERG. In that regard, of course, the War Department has no interest.

Mr. WALTER. You do not suppose that anybody would contend that the needs of the military ought to be subordinated to that of the civilian needs?

Mr. AMBERG. Well, of course they would not contend that, but could simply say that it is essential that the civilians have certain materials and that the Army and the Navy and the Maritime Commission need certain materials, and the contention would be that the civilian supply ought to be more. And in view of this whole situation we say that the War Production Board is the one to make the allocations.

MR. KIFFAUVER. Is there any way to divide it up? Suppose the war agency has got 70 percent of the copper for its requirements and civilian production 30 percent, and because of requests from General Eisenhower the War Production Board finds it necessary to step up the war requirements to 90 percent, does that mean in order to get the 90 percent you have got to make a change or modify the allocation to civilian supply?

MR. AMBERG. That might happen; yes.

In addition, Mr. Walter, it is not always possible—and this has been one of our greatest difficulties with reference to priority of allocations—it is not always possible to follow the end use of a particular piece of material which may be going, let us say, into fractional horsepower motors. These motors are required in considerable number in the big Army bombers or the Navy planes, but they might also be needed as components of some other items used in the civilian supply and therefore we get a complex problem if we were to permit the civilian or the agency representing the manufacturer or the wholesaler or the retailer who is producing and selling something for civilian use to say that he ought to have more motors, let us say, and that would affect our whole military problem. But as I stated, our interest is with the military requirements. I am here to say that this matter is of such importance to the War Department, that is, this priority relationship, that if there is to be any disturbance of this particular method in our war production that Judge Patterson would like to appear and he would be able, and is far more able to present the matter than I am.

The CHAIRMAN. Just to follow this matter through; if this amendment should go through, and I am just asking an exploratory question, all that would be involved is the civilian supply: there would not be a determination by the courts of the question as to whether the materials are essential, that has already been done by the War Production Board, so there would be no question of any such material being diverted from war to civilian use. But after the diversion had been made to the war effort and the retention of the share on the part of the agency of the Government is fixed and the other part of the material has been allocated to the civilian supply as not being needed in the war effort—and I am using a great many words in asking the question, but do you think there is any sort of precautionary language needed or would there be any danger, from the standpoint of the war effort, to giving the civilian who feels that he has been aggrieved because of an unfair distribution among civilians of something he wanted; do you see any danger from letting him go into court?

MR. AMBERG. Of course, I am not connected with the War Production Board and we are interested in the effect it might have on having a large number of courts throughout the country pass on this particular item that the plaintiff wanted.

The CHAIRMAN. Pardon me; I should direct that question to the War Production Board.

MR. AMBERG. But we at least like to have the right to determine what is needed in the war effort.

MR. RUSSELL. Mr. Amberg, may I ask you a question: The shotgun case has been presented to the committee several times, the case of an application of two responsible hardware dealers to the War Production Board, who were in the same town and perhaps on opposite sides of the same street, and had been doing business for some time. One

of them on his application, received 100 shotguns and the other did not receive any. Neither the War Production Board nor any other agency ever explained why they acted in that discriminatory manner.

Not only in that case, but in many other cases of like manner where men have been favored, perhaps not intentionally, but nevertheless they have been favored by being granted priorities to the extent that they were able to put their competitor out of business.

Now, surely, you would not say that those men would not be entitled to go into court and ask such agency to show cause why these men are being discriminated against.

I think that is the feeling of this committee. I can speak for myself, and I think I can speak for the committee in this regard, that so far as critical materials are necessary in the prosecution of the war we do not want to infringe upon that in the least, but when it comes down to the domestic use, domestic supply, we feel that if there is some individual who is trying to favor one concern, as was done in the case of the shotguns, there ought to be some remedy for that individual who is aggrieved.

Mr. AMBERG. That really is a matter for the War Production Board rather than the War Department.

Mr. RUSSELL. But you cannot give us any idea on it?

Mr. AMBERG. Here is the answer to that, as far as the War Department is concerned; let us say we needed a certain number of shotguns and we also needed the materials, the facilities and the manpower that might be required in making those shotguns for making some other type of gun, a rifle or a machine gun, we certainly would not want any restriction that might permit the man who said he had been discriminated against, to go into court and say that we should let him have more shotguns, because the war effort may require either the shotguns or the materials and facilities and labor or something else required in their production.

The CHAIRMAN. Let us hear from the other gentlemen if they have anything they wish to add. I believe we have the viewpoint of Mr. Amberg.

STATEMENT OF LAURENCE M. LOMBARD, ASSISTANT GENERAL COUNSEL, WAR PRODUCTION BOARD

Mr. LOMBARD. Mr. Chairman, in connection with the question of the separation of materials that go to the civilian from those that go to the military needs, I think perhaps if I outlined a few of the methods of application which are used it might bring out the problem, because in the early days the civilian supply was a part of the Office of Price Administration when it was known as the Office of Price Administration and Civilian Supplies, or O. P. A. C. S. At that time they were supposed to take care of the civilian part of supply and the War Production Board, or at that time, the Office of Production Management, of the war requirements. It was the thought, for instance, with respect to copper, that there was a pyramid, that you would take so much of it for the military and the rest of it for the civilian requirements, but in handling the priorities and in the handling of applications at that time we were constantly confused because we could not separate the copper pile in that way; so many of the manufacturers of the products were making things that went to the military and into civilian hands.

In the production cycle many of the same materials or the same components, as Mr. Amberg pointed out, were used for the military and for civilian uses and we found the separation of the stock pile almost impossible.

Mr. WALTER. Let me take a concrete case where 10 percent of the materials available for civilian uses has been determined and somebody decides how that is to be allocated. Now what is there under the law today to prevent a person from making the allocation, favoring one concern, of all that 10 percent and none to his competitor in the same field?

Mr. LOMBARD. With the law as it is today I do not believe there is any.

Mr. WALTER. That is just the point.

Mr. LOMBARD. Except within the Board.

Mr. WALTER. And what we are trying to do is to write into the law a provision that will prevent that particular situation from arising as already has arisen.

Mr. LOMBARD. I am sure that there have been, but I do not believe it is possible to write something into the law that will cure that.

Our agency has gone to a tremendous amount of effort to establish procedures and rules and criteria within itself to see fair treatment is received throughout. But we are dealing with things in which in practically all cases there is a shortage of material; there is not enough to go around, there is not enough of any particular kind of material, and to permit a man to go into court and say, "I want more of this material," he could show in almost every case a hardship is resulting with respect to possibly hundreds of things, but after all we only have a certain amount, and we are dealing only with materials of which there is a shortage.

Mr. WALTER. But also he could show that the man who made the allotment to the man who got all of the material that he wanted received more than he should have received, and therefore there ought to be some control over this particular fellow. Do you not think there ought to be some legal remedy in a situation of that kind?

Mr. LOMBARD. If he comes in and shows that to the War Production Board I think they can make any readjustment that might be needed to meet the situation, and if he gets turned down and feels that he is being unfairly treated, we have set up a Board of Appeals for the purpose of taking care of situations of that kind. There is a five-man Board within the War Production Board which has available to it all of the personnel, the facts, and is able to turn to the record concerning the materials, and certainly with far more information than the court could have and better able to determine the case.

Mr. WALTER. Would it not be true that the man who seeks an equitable determination of his claim, and who, as you say, can go to the five-man Board—and you prefer the five-man Board—could furnish the same information to the court to pass on the same question?

Mr. LOMBARD. I think it is necessary to have all the information available before the man before whom he appears. And, we are dealing with a temporary emergency measure. And if you are seeking a court review in that situation I would like to point out that there are many types of allocations and authorizations that we have to deal with. For instance, there are some 30,000 applications for preference ratings coming in every month to the War Production Board. Those

are being considered by the various industry divisions, applications for preference ratings to assist them in getting materials; they are considered by the various divisions which are cognizant of the facts with reference to the particular materials and with the particular products that are being made. They have to consider the importance of one product in their field as against another product and its effect on the available supply. And there are certain types of equipment that are obtainable only on application; there are particular types of construction equipment which the War Production Board must pass upon. And, the divisions that handle these have to know the importance to the war effort, and be able to find out from the applicant what he is doing, how important what he is doing is as compared with another operation. That is the type of thing that it does not seem the court could possibly review and have the full knowledge and intelligence to pass upon as equitably and as much in the interest of the war effort as could be done by someone in the War Production Board.

Mr. WALTER. Of course, you realize that when a person is seeking equitable relief he must make out an affirmative case that appeals to the conscience of the chancellor; he is not going to be able to come in and simply make a complaint that the Board is not allotting to him the materials he needs; he has got to prove certain facts, and one of the things that he must show is that the operation of the war effort will not be disturbed.

Mr. LOMBARD. I appreciate that.

Mr. WALTER. All right; if that is a fact, why would you be opposed to giving the man an opportunity to come into court to show that what he is requesting would not upset the war program, simply because it upsets the ruling of an agency engaged in the tremendously important task that it is engaged in?

Mr. LOMBARD. If I can point out to you some of the things that we are doing—

Mr. WALTER (interposing). Well, I do not think that is necessary.

Mr. LOMBARD. With reference to some of the allocations, for instance, for certain projects and the applications for materials for a particular facility that is being applied for.

The quantities of material available are determined quarterly or monthly; there is a periodic allocation of materials, of critical materials for the articles which are to be made. And there is not sufficient supply, to begin with, to meet the entire requirement so they are divided up among the needy users. By the time there had been an appeal and a court review and a hearing the case would be moot because the materials have already been divided up, unless we were to hold up certain critical materials for a period of time until we could have had the court review.

The CHAIRMAN. I think we understand the position of these gentlemen. Your position is this: That we are engaged in a war and certain materials essential to the proper conduct, by agreement and public opinion, are generally necessary to go to the war effort first, and that there will be a limited amount that may be allocated to civilian uses, and the whole situation is disturbed by the fact that we are engaged in this war and have to do these things arbitrarily, because if it is left to the ordinary course of business somebody would run ahead and buy up the supply and it would not be possible for someone else to get any portion of the supply that he may need.

And in view of that situation there has to be some arbitrary allocation of materials, and it is your view of the situation that the people who are trained to deal with this job of determining the allocation of that supply are the ones who should do the job and can do it better than the courts, and I suppose it will be agreed by everybody, insofar as essential materials for the war effort are concerned, we could very greatly interfere with the conduct of the war unless some such agency as the War Production Board determine what was essential for war purposes.

But how could we very greatly interfere with the conduct of the war and the equitable distribution of these scarce commodities among competing civilians if we provide that in extraordinary situations where an unconscionable thing is being done that the aggrieved party might come into court and ask for equitable relief in the distribution of civilian goods?

The reasons you have suggested are reasons against interfering with the conduct of the war. But how would it hurt the conduct of the war if the language of this proposed amendment were written into the act:

That no civilian use should interfere with the requirements of the people who are conducting the war and that no judge should inquire into the soundness of the judgment as made by those making the allocation for war purposes.

Mr. LOMBARD. Will you repeat that?

The CHAIRMAN. That no equity judge may inquire into the soundness of the judgment of the people conducting the war as to what they require; in other words, that is excluded from the field of inquiry in determining whether he should exercise the power of the chancellor.

Mr. WALTER. May I just suggest this additional language, in addition to the proposed amendment.

An arbitrary or capricious failure or refusal to grant allocation of surpluses available for the use of civilians.

Mr. LOMBARD. I am fearful of that for this reason: I do not think that anybody who has not been right in the supply picture and in the distribution picture can appreciate the necessity, and I am fearful that the courts, the district courts for which I have the greatest respect, not having been right in the picture, cannot appreciate the difficulty, and the many questions that have had to be taken into account before they act. Now if the court is going to have any power whatever which is worth anything—and there is no use giving to the court any authority unless it has such power—it is not going to be of any value otherwise—and I am afraid if that is done we are going to be confronted with injunctions all over the country simply because the courts might not appreciate the effect of their actions on the allocation of war supply.

* Mr. WALTER. Do you think a court would grant a temporary restraining order unless the complaining party made out a very strong case?

Mr. LOMBARD. I think a great many cases of hardship could be made out and until the judge could get all of the facts before him—he would naturally grant any relief that might be granted, if he granted it, on the record before him, and the difficulty would be in getting the other side of the case before him before he passes on the petition. I am really fearful that such might be the case.

My philosophy of this whole war-production program is that we are in an emergency status and that we should repeal this authority as quick as we can.

If there is danger of an amendment of this nature being passed I really think that you ought to hear from others who are interested in the war effort, for instance, Mr. Krug, Judge Patterson, and perhaps Mr. Forrestal.

The CHAIRMAN. The committee would want to hear from those who are representing the agencies fighting the war, before we put such an amendment as this in.

Mr. LOMBARD. I think such an amendment which attempts to grant that review to civilians, might interfere with the military effort.

The CHAIRMAN. The committee will take a recess, and come back here this afternoon.

(At 12:30 p. m., a recess was taken until 2:45 p. m. the same day.)

AFTERNOON SESSION

The CHAIRMAN. Gentlemen of the committee, you will recall that before the committee took its recess at noon the interest of Judge Patterson in this proposed amendment was indicated and he has been good enough to come down and give us his views.

Judge Patterson, you are familiar with the matter the committee is considering I believe.

STATEMENT OF HON. ROBERT P. PATTERSON, UNDER SECRETARY OF WAR

Mr. PATTERSON. Mr. Chairman, it is my understanding that you are considering the extension of the Second War Powers Act and there is up for consideration an amendment which would affect the priorities and allocation powers for war materials resting within the War Production Board. The War Department has great concern in the matter because the equipment and supplying of the Army—and of the Navy, for that matter—rests in great measure upon the efficacy of the work done by the War Production Board in giving us priority, either by a general rule of priority or by special allocations for our needs.

The CHAIRMAN. Judge Patterson, may I interrupt you to give you the particular phase of this matter that we are considering.

Judge PATTERSON. Yes. I understand that an amendment has been considered whereby injunctive relief by the district courts could upset or modify the orders of the War Production Board, the order being designed to give the armed forces the use of our natural resources to fill our needs, and beyond that to satisfy the essential civilian production, and I want to point out a thing that is not entirely obvious at first sight.

Mr. WALTER. May I interrupt you for a moment, Judge Patterson?

Mr. PATTERSON. Certainly.

Mr. WALTER. There has been no disposition on the part of any one to change the law so as to permit a review of the allocation of strategic materials for war purposes. The amendment proposed deals only with the surpluses over and above those needed for war purposes.

Mr. PATTERSON. Well, I was going to say, and that is the point I was coming to, Mr. Walter, that there are many things affected by the allocation and priorities made by the War Production Board for civilian uses in a way that is not grasped always at first sight. For instance, take the rails; we have nothing to do with the supply of steel or finished products to the rails, either in the total amount or as to the special rails, and yet our operations are absolutely dependent upon the well-being and wholesome condition of the railroad traffic. We could not move into the ports of embarkation otherwise, and it would seem to me that the War Production Board ought to be unhampered, for our purposes, ought to be unhampered in the power to allocate steel rails, locomotives, cars, and so on, by the priority and allocation power which it has as between rails, and that to permit review of its order by the judiciary would in effect give the courts power over war production and military operations which I do not think they are equipped to handle.

Mr. WALTER. Let us take this hypothetical case and suppose that somebody in the War Production Board says to one railroad it can have steel for rails and the other cannot, or should make an allocation that would be inequitable, that would serve one road to the disadvantage of the other in the allocation of surplus materials.

Mr. PATTERSON. That is reviewable in the War Production Board right now, right up to the chairman, and I dare say that of Mr. Justice Byrnes in the Office of War Mobilization, so that if some individual away down the line acts in a discriminatory manner that does not necessarily govern in the final results.

Mr. WALTER. I understand that.

Mr. PATTERSON. But I would say that even that were preferable, even though no actual justice were done as between the two lines, even that were preferable to allowing 100 district judges to say "Well, I do not agree, and I think that this or that rail line ought to have been given more than it received."

Mr. WALTER. I am referring to that which comes out of the excess supply.

Mr. PATTERSON. But, Mr. Walter, you cannot isolate a term that way because the things vary from month to month. And also when you get into the components of raw materials and the balancing of the supply of materials and labor, and so on—

Mr. CELLER. Take shoes, for instance.

Mr. PATTERSON. Engines or tractors: We do not know who they are going to or will eventually go to when they are finished. It is hard to make the determination in advance.

Mr. CELLER. As an example, shoes or leather: It might be shoes that get into the civilian supply and it might be called a civilian material and yet like many other materials it might have an effect upon the war effort in manufacturing shoes for the military use when leather has been used for civilian purposes.

Mr. PATTERSON. Yes. I think that the economics of the country are so intricate there has got to be a head; it has to head up under one administrative authority in the conduct of war and there ought not to be a judicial review of it in time of war.

We have plenty of supporting industries that are necessary in the conduct of the war that at first sight one might say are not a part of

the war program, but they are what we call the essential civilian program. And if you try to allocate according to some judge's idea of abstract justice of some kind between the users of those materials, you run the risk of upsetting the military operations of the armed forces. That is my opinion.

Mr. WALTER. Well, the rails are in a different class; let us take something that is entirely nonessential to the war. Do not the railroads receive allocation of materials in accordance with their needs rather than out of any surpluses that are not required for military forces?

Mr. PATTERSON. Well, it varies from time to time. The needs of the rails and the utilities all carry over to the essential civilian activities, and those needs are, I think, again the question for the War Production Board to determine, and they change month by month; the War Production Board makes a periodic allocation of materials to them and they can, so far as the control of materials are concerned, and I understand that steel, copper, aluminum, for instance, move in accordance with those allocations.

On the other hand there are components, like motors, valves, and all kinds of products that go into military products and civilian products alike and one of the hardest problems we have to grasp I think, is the control over those components; the end products are all right, but in order to get the end products you have got to get the basic materials.

The CHAIRMAN. Judge Patterson, you have made a very clear statement of your views, and unless some members of the committee would like to ask you a question I wonder if we might hear from the Navy. I think you have stated your views very clearly.

Mr. PATTERSON. I admit that hardships develop in time of war and that there are minor inequalities, but those cases will not bear comparison with the sacrifices that the soldiers are making; in comparison they do not amount to a row of pins.

Mr. HANCOCK. Do you not think there is any lawful way we could protect the independent manufacturer of civilian goods from discriminatory and rank injustice?

Mr. PATTERSON. There is review machinery, Mr. Hancock, right in the administrative set-up here.

Mr. WALTER. That is not the testimony. We got the impression from the testimony that there had been a withholding or a refusal to act on priority requests and that there is no reviewing machinery set up in the Board to review such complaints.

Mr. PATTERSON. There is review machinery all the way covering all allocations in the War Production Board.

Mr. CELLER. Yes; there is.

Mr. PATTERSON. That is provided, and if there is any question about that, I think you should hear Mr. Krug.

Mr. RUSSELL. You spoke about the rails: All of us admit that the rails are necessary for the war effort; transportation must be carried on, but we are not thinking about the railroads in connection with this amendment; we are thinking about the common man, the little merchant, the hardware dealer, the farmer, the carpenter. For instance, there is in my town a carpenter who does not have a very good reputation, who gets enough lumber to build 10 houses and another carpenter who is competent cannot get any. Our people just do not understand that. Then the old shotgun case where two men living in

the same city, operating hardware stores, perhaps on the same street; one of them gets 100 shotguns and the other gets none. And Mr. Walter told us of a merchant or manufacturer of toys, a part of which called for the use of a small chain. The War Production Board denied him a priority, and he could not get material while his competitor got all he wanted, and put him out of business.

Those are the things we are hoping to reach by this amendment.

Mr. PATTERSON. Well, how can we devise it?

Mr. RUSSELL. To stop favoritism on the part of some agency.

Mr. PATTERSON. How can you confine the problem to just those cases; by what language can you do it so that it will not go further and affect something that might be necessary in the operation of the war? I do not know.

Mr. WALTER. Apply it only to those materials that are not essential.

Mr. PATTERSON. But we have all kinds of things that are essential to the war effort that are not directly tied into the military allocations.

Mr. WALTER. Let me call your attention to the language I want to propose—

Arbitrary or capricious failure or refusal to grant allocation of surpluses available for the use of civilians not engaged in war production.

How could the adoption of that amendment in any way affect the war effort?

Mr. PATTERSON. Will you read that again?

Mr. WALTER. "Arbitrary or capricious failure or refusal to grant allocation of surpluses available for the use of civilians not engaged in war production."

Mr. PATTERSON. That will touch the rails; that will touch utilities.

Mr. WALTER. Well, of course those are services that are connected with war production.

Mr. PATTERSON. They are not primarily engaged in it; most of their work of course is for civilians, and I think if we could trace it we would find in some way all other war production or services touch every activity in the Nation.

Mr. CELLER. Is there any clear demarcation on what is essential and not essential?

Mr. PATTERSON. I have not been able to find it.

Mr. Baruch told us never to define anything as unessential; I think he said it was more essential or less essential. They will tell you that the exhibition of motion pictures, of the display of a map may be something that affects civilian morale and that the improvement of civilian morale is necessarily a part of our war production set-up.

Mr. JENNINGS. It does occur to me that we do not have to surrender our common sense of proportion, because we all know that there are certain materials and goods that are used exclusively by civilians for civilian uses and that are outside of this domain of the war effort, and I would not for a minute do anything that I thought would cripple or hurt the war effort. But when we get to this domain where we have essential civilian goods and civilian uses and I see right under my nose an injustice resulting from the exclusive allocation of shotguns that are used by farmers to kill predatory animals, or used by people to kill ducks, and I see one concern getting guns and the other man getting none without any explanation, because there could be no

explanation for that sort of discrimination, that is the thing that I want to reach.

Mr. PATTERSON. What is the remedy? Are you going to say to one manufacturer that he must make more shotguns in order to sell to A or B?

Mr. JENNINGS. No. Say to the agency who makes the division of this 100 shotguns that you admit are to go exclusively to civilians that they are to be divided equitably.

Mr. PATTERSON. I know, but suppose the 100 shotguns had been sold?

Mr. JENNINGS. They were sold. The question was, who should get them, and I want them divided so that no one will get all of them. That is what our proposition is. We are trying to reach the fellow somewhere down the line who does not do right and who can only be made to do right by the interposition of the court, by giving the injured man the right to go into the courts of the country under the law of the land.

Mr. PATTERSON. But I submit that any language that you write is apt to do more damage than good.

Mr. JENNINGS. This deals with a war between two competitors, or between two firms that are engaged in legitimate enterprise, and one of them gets in on the ground floor, gets on the inside, and receives everything, and the other fellow sits back out in the hall and gets nothing. Here is one man who has a lot of customers whom he has furnished shotguns, we will say, and cannot supply them, and they will tell him, "Well, I am going to deal with someone who can get what I want."

Mr. PATTERSON. What about the man who is called into service and who has to close up his business and the other man does not? He is put out of business and the other fellow stays.

Mr. JENNINGS. That is another case. There are men who are too old to go into the service.

Mr. ROBISON. As I understand it, the judge does not pass upon the question of whether or not material is essential for the war effort.

Mr. JENNINGS. No.

Mr. ROBISON. He passes upon whether there is discrimination.

Mr. JENNINGS. Yes. I do not want the judge saying what is essential to the war effort; that is the job of the War Production Board, and if it says this is essential to the war effort that ends it, and if the War Production Board or some other Government agency says the material is essential to the war effort and should be used to the exclusion of everybody else, I am satisfied.

But, if they say there is a surplus available for civilian use only and will not affect the war effort, then the only question involved in this amendment is to give to the person who claims he is discriminated against the right to go into court and seek relief.

Mr. PATTERSON. I understand.

Mr. JENNINGS. Against the boy who gets on the inside track and gets an allocation of everything to him.

Mr. PATTERSON. I just repeat the fact that there are a lot of things that have to do with essential civilian supply, and I have given you an illustration of the rails and I could give you a great many more that are all vitally concerned in the prosecution of the war although under the military program they are not defined as military needs. The rails are one.

Mr. JENNINGS. I would not touch the rails.

Mr. PATTERSON. But the language itself touches them and I do not know how you can define them out.

Mr. WALTER. My attention has been called to some firm in Washington known as Public Relations Counsel and that all you have to do in order to get an allocation was to retain this firm to represent you. I would like to do something about that situation.

Mr. PATTERSON. I have heard that said about the courts too.

Mr. JENNINGS. Not often.

Mr. PATTERSON. Not very often.

However, we have all got the same problem. I think when you come to the allocation of materials, say steel, as between plows and tractors, can you say that the man who cannot buy a plow cannot do so because there is not enough steel allocated to the manufacturer as between the needs for war purposes and for the production of tractors?

Mr. JENNINGS. No.

Mr. PATTERSON. Is the district judge going to pass on whether the plow is important for the war effort or civilian uses?

Mr. JENNINGS. I never heard the question raised. When you get to the question of the farmer, I know what that is; I know about tractors on the farm——

Mr. PATTERSON. But the Army is taking far more tractors now than the farmers.

Mr. JENNINGS. Yes; but I am talking about farm tractors.

Mr. PATTERSON. Yes; and I am too.

Mr. JENNINGS. I know about them.

Mr. PATTERSON. I have a tractor myself, on my farm.

Mr. JENNINGS. Now suppose I could get on the inside and freeze you out.

Mr. PATTERSON. But I just have the feeling that any language that you try to write to comprehend that case is going to do more harm than good.

Mr. SPRINGER. Do you not think, Mr. Patterson, that when the man went into court and the War Production representative made the statement before the court that the material in question is needed for the war effort that all of the courts in this country will recognize that statement, in the face of the proposal we have here under consideration?

Mr. PATTERSON. I do not think so.

Mr. SPRINGER. You do not think the courts would?

Mr. PATTERSON. No. I think the courts will say, "I will decide the case for myself" quite often, and you see so little about it being arbitrary or capricious when it comes to letting the judge decide the case on the facts in the record before him.

Mr. SPRINGER. On the other hand, we have men down in the Department who are arbitrary. Do you not think that the courts would be fair in these matters?

Mr. PATTERSON. They would want to be fair, of course.

Mr. SPRINGER. And they are sitting as courts of equity and do you not think they would try to work out the equities in favor of all parties concerned?

Mr. PATTERSON. Well, they get reversed plenty of times.

The CHAIRMAN. Here is what I understand to be in Judge Patterson's mind. Someone has to say the final word with regard to the

use of this property, and Judge Patterson has the idea that in his organization there is first given the right to appeal, and some members of the committee had cases that have come to their attention where the effort is not one that interferes with the war. Everybody appreciates the thing that we are engaged in is vital, because if we lose the war we lose everything, but that we are hoping, and it is only for that purpose so that something might be brought about so that the aggrieved person who says he has failed to receive justice in your organization can present his matter to a court of equity concerning matters relating solely to civilian uses.

I think that is very clearly in the mind of this committee, that as among civilian users, if we can do something to work out some sort of language, if it is possible, providing that the aggrieved civilian can have an opportunity for a judicial determination with respect to his rights, from the standpoint of equity and justice in possibly the allocation to him of some materials for civilian uses that have not been allocated to him, that should be done. I think that is about as near a picture as I can give of what is in the mind of the committee, and I think I have also indicated what is in the mind of Judge Patterson. You realize it is a difficult situation. We are dealing with human beings who make mistakes and you feel, however, that your organization has the information at its disposal and is in position to make a better decision on what to do with our resources.

Mr. ROBSION. Do you not think that the war agencies, all of the time, under the law as it is and as the proposal is written, have the power to say what is essential in the war effort?

The CHAIRMAN. Judge Patterson has made some explanation with regard to that.

Mr. PATTERSON. May I say, they have that, but, of course, they classify what you call surpluses as essential civilian uses, in most cases, I believe.

Mr. ROBSION. And as to what is not essential.

Mr. PATTERSON. Essential to the maintenance of the civilian economy.

Mr. ROBSION. There is no proposal to determine what is essential here; that has already been acted on before this amendment could become operative. It is just after that question has been decided by the war agency, after someone representing the Government steps out here and goes to discriminating as between two citizens who are civilians where the amendment becomes operative, and no court could pass on whether it is essential or not under the proposed amendment.

Mr. PATTERSON. I think the allocation of the civilian supply among civilians does affect the conduct of the war.

The CHAIRMAN. You do have in your organization an agency to which resort could be had, the opportunity which I have indicated, where a civilian believes that he ought to have allocated to him a part of nonessential materials and who has not got what he knows other civilians have received and what he thinks as a citizen he is entitled to? But it is your feeling that there is no better place than your organization where resort may be had?

Judge PATTERSON. I do not know the organization of the War Production Board very thoroughly, but it is always my understanding that redress is given on appeal where discrimination is shown.

The CHAIRMAN. Is there someone who can answer that question?

Mr. PATTERSON. Is there someone here from the War Production Board?

STATEMENT OF BRIGADIER GENERAL MINTON, WAR DEPARTMENT

General MINTON. I think there is an office in the War Production Board which would do what you have in mind, and the final judge on civilian supply matters.

The CHAIRMAN. Is there anybody else who can answer that?

Mr. WALTER. The War Production Board does not have. After the committee recessed they were discussing the possibility of setting up a certain agency which does not now exist.

Mr. MICHENER. We are in troubled conditions and we must take that into consideration, and if we provide a right of appeal from the War Production Board, open up the shotgun cases, the toy cases, and the number of cases that I have had come to me in my own district and where I thought injustices were being done to some little man around the corner, where abstract justice required other action; but if we let down the bars, I am just wondering how many additional attorneys, how many additional employees it is going to take on the part of the administrative authorities to do this abstract justice.

Mr. PATTERSON. In the War Department I do not have any interest, if you will limit it to things like toys, limit it to final products that are not essential to the war effort, the War Department has no interest in that at all. But I would like to ask you how you are going to define that in the language.

Mr. CELLER. There is another difficulty that would arise in the fact that we have 10 different circuit courts of appeals with 10 divergent interpretations now with respect to the Wages and Hours Act. I can well imagine the difficulties that will arise with respect to the interpretation of the War Powers Act.

Mr. WALTER. It is not a question of the interpretation of the act, but a question of whether there has been discrimination.

Mr. PATTERSON. If the case is limited to such things as toys, games, or cosmetics, or something like that, the final product, that is, the end use, has a remote connection, if any, with the war effort, I have nothing to say about that. We are concerned with things that are connected with the war effort.

Mr. LEWIS. It seems to me that we are in agreement there with Judge Patterson, and that we could well write into this language words that would make it clear that we are not attempting to interfere with the War Department, the Navy Department, in the prosecution of the war, and that we are dealing wholly and solely with rights as between civilians and civilian users.

Mr. PATTERSON. Mr. Jennings, I agree with you.

Mr. JENNINGS. I agree with that.

Mr. PATTERSON. It surely should not operate as to components of any end product of public necessity.

Mr. JENNINGS. I agree with you.

Mr. CELLER. But how could you write in such a definition?

Mr. PATTERSON. I think that it would be a very hard job.

Mr. CELLER. I could give you an illustration: Take denatured alcohol which probably they may decide is a component; they cannot get

grain alcohol for many uses and they are using denatured alcohol. This denatured alcohol also can be used in the war effort to manufacture certain ammunitions, so you do have a supply of denatured alcohol that can be used as a component in the manufacture of articles in the war effort.

Mr. LEWIS. Yes; but it seems to me that we could write the language so clear in meaning that it would deal only with surpluses, and in the allocation of those surpluses all this amendment aims to do is to prohibit somebody in the War Production Board giving a supply to one company and nothing to another, or allotting a supply to one and none to another.

Mr. CELLER. I sympathize with the difficulties, but I do not see how the language could be so drawn.

Mr. HOBBS. There have been 42,000 appeals, and of those 38,000 of them have been resolved in favor of the appellant, the ordinary citizen.

Mr. WALTER. Take the shotgun case——

Mr. HOBBS. I do not mean shotguns. We have very few shotguns, anyway.

Mr. JENNINGS. But that was used just as an illustration. But fundamentally, in general, it occurs to me that as between two citizens where somebody, some official, is acting arbitrarily in favor of one and giving nothing to the other fellow, giving him the green light, and when those on top refuse to take any action to correct such discrimination there ought to be some remedy in court.

Mr. HOBBS. He has got an appeal, first, to the man who makes the allocation, and then to a 5-man appeal board, and it was told us this morning that any man who would favor another man, when it was pointed out, would be kicked out.

The CHAIRMAN. May I suggest that we have some gentlemen here who have very responsible duties, and let us get through with them as quick as we can.

Is there someone else who wishes to be heard on this matter?

STATEMENT OF J. A. KRUG, CHAIRMAN, WAR PRODUCTION BOARD

Mr. KRUG. May I say that my time is not as important as Judge Patterson's time, and I can wait until the committee has finished with him so he can go back to his job.

The CHAIRMAN. The judge may go, but we would like to have him stay if he can.

Mr. KRUG. Mr. Chairman, I appreciate the opportunity to come up here and, needless to say, I have had short notice and am not sure that I have at my fingertips the things you gentlemen might want to inquire about.

However, I do want to say to you that about 2 months ago I appeared before another committee where I was asked the question: "What do you know about this job; you have only been out of the Navy 2 weeks?" and I had to tell him that I did feel that I knew something about it. As a matter of fact I grew up with the priority system and the problem of allocation. I started in the old Office of Production Management when some bright boy got the idea there might need to be determination with respect to materials in order to get the war job along, and I have seen it develop from that early stage down to the present time when we do have, I think, a pretty effective allocation

tion of all the critical items that flow into the war effort or into civilian economy, and here in this discussion I just want to point out at the outset that it is an awfully hard and difficult job. We are trying to make this the arsenal of democracy and I think we have done a pretty good job. We have done this by forcing our great economy into the war effort and concretely of course, the allocation of materials is one of the specific elements in that system. There are other important elements, such as labor and facilities.

The CHAIRMAN. Of course, we understand all of that, Mr. Krug. It is agreed by the committee that into the war effort must go everything that is needed to bring the war to a successful conclusion.

Here is what the committee is considering: That whether or not, once you have decided the question with reference to that part of our resources in this country, you do not need and that are definitely to go to civilian uses, if there ought not to be put in this bill something that would give the civilian who feels he is entitled to a part of these civilian good that some other person is getting, his fair share, because he feels the administrative agency has discriminated against him, the right to go into court and have the matter determined.

Mr. KRUG. That is the point I was coming to.

The CHAIRMAN. We are right at it now.

Mr. KRUG. I would like to say this: I am very sympathetic with the person who does not feel he is getting his fair share of these materials that we have to allocate, and we are trying to take care of his problem in the administrative management that is established in the War Production Board and in the agency just above it, the Office of War Mobilization.

We have provided, as you know, an appeals board, which is an impartial organization, to hear the complaints of arbitrary action on the part of any administrator who is responsible for these orders, and I can assure you that we have not always left it to the appeals board, because I have spent a great deal of my time, and I am sure that Mr. Nelson did before me spend a great deal of his time in listening to appeals of people who felt the board has not considered their particular problem promptly.

Of course, there is above me, in the administrative line, Mr. Justice Byrnes, and he is aiding in the difficult problems we have to solve. For example, one of the questions is what should go into the allocation for farm machinery. I went to Mr. Byrnes and we spent considerable time on it, and we have endeavored to establish that in a way the average citizen can go through the board of appeals and get what he has coming and, really, much of my time is taken in that way. I feel that it is so important that we have a reputation for fair treatment that I do take my own time to hear these complaints, where the line of relief has not been made sufficiently clear, or if we have not been able to make it clear to the complainant, but in the end I am responsible to you gentlemen, and if we are not doing a fair job on it I want you to call down there on any cases where the average citizen feels he is not getting his part of the materials or wants his case reviewed.

I feel that if that part of our job is going to be put in the courts we would end up with a hopeless administrative problem of spending a great deal of our time in courts on the over-all problem of allocation, because you cannot list the amount of steel that is going into

boats or bombs without looking at the problems that relate to the allocation of the total quantity of steel for various other purposes that have to be taken into account. And I sincerely feel that if at this stage of the war we shall try to write in language that will protect the indefinite thing at the moment; instead of helping we are going to encumber our whole machinery with a lot of red tape, and perhaps a lot of legal red tape that could make our job so difficult that we would have delay in the prosecution of the war.

Mr. WALTER. Why do you feel that a five-man board is in better position to pass on a question and to say that justice is being done than the courts?

Mr. KRUG. Because they put in their whole time handling the work of the War Production Board; they are spending sometimes 10, sometimes 12 hours a day, 6 days a week, and occasionally on Sundays, and they have been doing that for a period of 3 years; they have at their hands the facts with respect to any allocations that are made for civilian or the war use. They take into consideration all the problems involved and they can fit it into the framework of the allocation problem.

Mr. CELLER. What is the qualification of the members on the appeal board; who appoints them to their position?

Mr. KRUG. The Chairman of the War Production Board appoints them; he tries to select impartial people and put on the board men who have had some labor background, men who have had some background in civilian requirements; and we have as chairman of the appeals board an able university professor.

Mr. CELLER. Dr. Holcomb?

Mr. KRUG. Yes. I think I can illustrate the point by saying that one of the most difficult problems we have had in allocation is with respect to newsprint. Every newspaper feels it is discriminated against if it does not get its share. And we have handled a great many cases, and yet I have never known of a newspaper who did not feel that Dr. Holcomb was fair in handling the problem.

Mr. CELLER. Is it not possible that the power to create also is the same one who has the power to destroy? In other words, is it not possible for someone in your department to grant an allocation and that same person withhold the grant, and thus minimize it away entirely?

Mr. KRUG. It is possible for the same man to amend an allocation, upon certain grounds, to limit the amount, or reduce it, but the complaining party can always take his objection to the reviewing board if he feels he is not being given a fair deal.

Mr. CELLER. So that he has the right of appeal?

Mr. KRUG. Yes.

Mr. CELLER. You do not think it would be better if you separated the two functions, the right to create the allocation, from the right to consider it on review?

Mr. KRUG. I am afraid it would not be better because the man who makes the allocation quite often is in a better position to know where it should be amended.

Mr. KEFAUVER. If you were to place this matter in the courts, in order to have as good administration as possible in each of the 160 district judges, they would have to have full information and facts

with respect to the supply and needs and the whole picture in materials like steel, for instance?

Mr. KRUG. In order to do a good job they would have to have that information, and in order to make sure that we will protect the war effort we have got in our own organization a set-up for that purpose.

Mr. KEFAUVER. And what about the examination by 150 different judges?

Mr. KRUG. That, of course, is another difficulty.

Mr. WALTER. Of course, each district judge would have to be a specialist on his job for the line of cases that come into his court, if your contention is sound.

Mr. KRUG. I do not think there is any problem that is as interrelated as the problems of dividing up the materials that go into the effort. I do not think there is anything so interrelated, where action in one place affects action in another; as much as we would like to decentralize our operations insofar as possible into field organizations we have found it exceedingly difficult to keep the group together so as to handle the problems in the same way all over the country. And we have not been able to go in that direction as far as we wish we could go because of the nature of the problem itself.

Mr. WALTER. What is the difference in making an appeal to a seven-man appeal board and an equal appeal to the court?

Mr. KRUG. In making their final appeals; but we do have to go through the field to see that we get uniform decisions.

Mr. HOBBS. And they do not have to come here to Washington to make their appeals; they can do that by mail, if they wish?

Mr. KRUG. Yes.

Mr. KEFAUVER. And, of course, they have their Congressmen up here

Mr. SPRINGER. Each one of these members of the Appeals Board is an employee of the War Production Board?

Mr. KRUG. Yes.

Mr. SPRINGER. And they draw their salaries from the War Production Board?

Mr. KRUG. They do.

Mr. SPRINGER. Our district courts, however, have no connection with either the War Production Board or with the people who may go before them?

Mr. KRUG. That is right.

Mr. SPRINGER. Do you not think there would be a feeling of fairness injected into the minds of the people if they could go before a tribunal that was not employed by the War Production Board, that was not appointed by the Board, was not an employee of an agency of the Government; do you not feel that would give them a sense of security that they do not now have?

Mr. KRUG. I am certainly not prepared to say that the fellow who is grieved by the allocation of materials would not feel better if he could go in the direction you have in mind. I am saying that if that is created I think you will make the job impossible in endeavoring to divide up the materials to find out how much is needed for war purposes and what is needed to maintain our civilian economy.

Mr. SPRINGER. Of course, there would be no material effect if we were to pass this amendment, except on that which is allocated for civilian uses.

Mr. KRUG. That is quite true, but there might be an allocation of certain materials for civilian uses in an area and the War Production Board would find that the war effort was such that it was necessary to make another allocation and that might occur in the same area.

Mr. SPRINGER. Of course, within the agency I think you could determine what part of this material should be distributed among the civilian population. This amendment is limited to protection against discrimination or injustice or unfair distribution of that excess supply as between one man and another, or one organization and another.

Mr. KRUG. I am afraid it could not operate very well.

Mr. SPRINGER. I would like to clear up one other thing. In the first place, your agency would determine that certain material was to be allocated for civilian uses; that would be the first step, and this amendment would have no bearing on that, once that had been done.

Mr. KRUG. I understand.

Mr. SPRINGER. Or who determines that.

Mr. KRUG. Yes.

Mr. SPRINGER. But when it comes to making a distribution or an allocation of the part set aside for civilian uses this amendment would have some effect.

Mr. KRUG. But let me point out again that, for instance, with reference to the allocation of steel for basic war needs, a determination is made that so much steel is needed. Then we find we have need for some rifles, and this may come out of the civilian supply. We parcel it out the way we think best in the interest of the war effort.

Now let us say that a manufacturer in Seattle, Wash., says that he ought to have a larger share of the farm machinery program, that he ought to get so much material out of the civilian supply. In the meantime we have found it necessary to step up the production of the B-29's, and in order to do that we dip into the civilian supply.

Mr. SPRINGER. But we are talking about items that are not related to the war effort whatsoever and are not expected to go into the war effort, are not needed for that purpose. Then the only way to protect the allocation of this surplus material which goes to the civilians and which is not a part of the war effort—that is what we are trying to reach.

Mr. KRUG. But may I point out that the allocations do have an effect on the war effort. As Judge Patterson pointed out, I do not know how you are going to separate that.

Mr. SPRINGER. Well, the man who was allotted so many shotguns that were not material for the war, when the distribution was made to one hardware firm of the 100 shotguns and his competitor right across the street did not get any—

Mr. KRUG. We do not distribute shotguns.

Mr. SPRINGER. But we have someone that does distribute them.

Mr. KRUG. We do not.

Mr. SPRINGER. But that allocation was made.

Mr. KRUG. Not under the War Production Board.

Mr. SPRINGER. I do not recall that department.

Mr. KRUG. I do not know where that allocation came from, but not from the War Production Board.

Mr. JENNINGS. But I happen to know about it, and I know it was made.

Mr. KRUG. That is interesting to me.

Mr. SPRINGER. I do not know who does it, but I do know there is an agency that does allocate them.

Mr. KRUG. That is interesting to me.

The CHAIRMAN. There is an agency that determines who is to receive them.

Mr. JENNINGS. Yes; and steel is made available for making shot-guns.

Mr. SPRINGER. One other point I want to ask Mr. Krug. Suppose this amendment has no application until after your Department has said this material is not needed for the war effort, that it is a supply that will go to the civilians, and what we want to do is afford protection between one civilian and another, not to give one an advantage over the other.

Mr. KRUG. Well, I am interested in that too, and I certainly want to do all we can, but I do not know how you can separate the allocation of materials that may be allocated to the war effort without at the same time affecting the war effort at places where we put that material to use in the war effort.

Mr. SPRINGER. Of course, when an agency determines that this material is not to be used for the war effort but is surplus material to go into civilian uses, once you determine that question what we want to do is to protect those who are securing the civilian supply.

Mr. RUSSELL. In other words, if you have surplus material that is set aside for civilian uses, do you ever find it necessary to make a change in your order and take some of that material for war purposes?

Mr. KRUG. Yes; that is changed almost every month.

Mr. RUSSELL. And an amendment like this would affect such orders as that?

Mr. KRUG. Yes; and we do have to change the allocations made for civilian uses and military uses. That is a very important part; and I think I can make it clear by saying it is not a question of piling up materials here and saying this is available for civilians and that this is separate from the materials that are divided up for the war effort. You cannot separate out one here and say this is material that will go into war production and have a very direct and immediate effect upon the war program and say the other does not.

Mr. WALTER. But you do have supplies from which you draw?

Mr. KRUG. We do, yes.

Mr. HOBBS. Does not this question as it relates to materials also bear a direct if not almost equally important relationship to the effect on manpower?

Mr. KRUG. Yes; and I think that any system which requires—would provide for—a court review of the over-all problem of allocations would be exceedingly difficult for the courts to handle—if not impossible, certainly exceedingly difficult for the Administrative agency to handle.

Mr. HOBBS. Do you have the information at your fingertips with regard to the number of appeals that have come up from such orders?

Mr. KRUG. I understand the number handled now by the Appeals Board runs up to 42,000.

Mr. WALTER. We are talking about appeals from orders?

Mr. KRUG. Yes.

Mr. WALTER. But are there not applications made and refusal to act where there can be no appeal? The appeals that you are talking about now are appeals from an order which show that an application is made for priority assistance and the War Production Board does not do anything about it. Those applications are filed and nothing done.

Mr. KRUG. It is true that at the present time, if he fails to get them, if he is told that he cannot have material for certain purposes, there is no appeal.

Mr. HOBBS. But it finally gets through the intermediate steps and through the intermediate appeals, through the board of five.

Mr. KRUG. Ordinarily the way the thing is handled is on an application for the priority. The application is to the War Production Board for priority and that goes to the particular division which handles the product involved. It is either granted or denied.

If the analyst denies it and the applicant feels he is entitled to have it granted, he will reapply, and we have thousands of them; they are usually handled by a superior. If he denies it, the decision in that case will go to the Appeals Board. Frequently the cases come direct to me, and they are turned over for review by another division. Some will say, "I want to get a priority approved to put a new burner in my home."

I personally have handled dozens and dozens of things of that kind.

Mr. CELLER. What happens when no action at all is taken, as my colleague has indicated, where one man is being put out of business in favor of another.

Mr. KRUG. He can then do the same thing. He can always come to the next line of authority, and I think we have a very good record in that respect. Of course, I would not say that you cannot find cases where the action has not been fair, but, on the whole, I think that out of the thousands of cases we handle every day we have a pretty good record.

Mr. CELLER. You do think it is very essential to try to help determine these cases where they do not get enough attention?

Mr. KRUG. I have spent a great deal of my time in appraising just what you have in mind, and in doing our work in that direction we are trying to work out these difficult problems, and I spend a great deal of my time in this division of the responsibility under the broad powers that have been given the President and under which we are operating, and I think the record of the War Production Board in the exercise of those powers is an outstanding one.

Mr. KEFAUVER. Mr. Krug, assuming that this amendment was put into effect and we had 30,000,000 tons of steel available for the civilian requirements and a lot of court orders were issued directing the allocation of the steel, on a manufacturing basis of 30,000,000 tons being available, and then you had to cut back on the amount that could be available for civilian requirements. You say you have had to do that a good many times?

Mr. KRUG. Yes.

Mr. KEFAUVER. Then you would be placed in the position of having to go into court to have the orders changed so that these people would not be getting more than their just requirements, would you not?

Mr. KRUG. The allocation for all basic materials is usually handled on a quarterly basis, but even there it has been necessary at times

during the quarters to change the amount allocated. Therefore it would have a substantial effect on it.

Mr. KEFAUVER. The result would be that you would have to have the courts change their orders every 30 days or each quarter, depending upon what the amount that you had available for civilian uses.

Mr. KRUG. If the court provided for such a distribution, that would have to be done.

Mr. WALTER. Could you imagine trying one case in all these district courts?

Mr. KRUG. I did not quite understand you.

Mr. WALTER. Could you imagine one of these cases being tried in all the district courts of the country?

Mr. KRUG. Well, I have spent my background, a great deal of it, in the regulation of utilities, and that involved problems, perhaps as difficult as I can think of, in the civilian economy, but that is a matter that the court can consider, but when you get into the problem of the allocation of materials which we have to have for the war program right on down to say what can be used in the civilian economy, I do not see how we can say to any one court that it can make a decision on what is a fair distribution with respect to materials that may have been set aside for civilian economy when the allocations are subject to change.

Mr. JENNINGS. As a rule, I think your agency has dealt fairly with the people, and what I am asking you to do is to take the isolated case where there is an injustice, where it is not a question between you but the companies in determining who among civilians are to have a certain supply. Now, these allocations are handled by some bureaucrat, and suppose this bureaucrat happens to have been an autocratic, arbitrary, capricious individual, and he gets it into his head to put somebody out of business, and in effect does put him out of business by giving all to his competitor. Now, how is it going to affect the war effort adversely if we undertake to say that this bureaucratic, arbitrary action on the part of some individual can be reviewed by the court? How is that going to disturb the war effort if we provide that a man can go into court, affect his rights, and undertake to have fair treatment?

Mr. KRUG. I would agree to one situation, ten situations, or a hundred; I think we could handle them, but if we had a large percentage of the allocations that—

Mr. JENNINGS (interposing). That is all this bill seeks to reach. The CHAIRMAN. Let him complete his answer, please.

Mr. KRUG. I say that if we had 10 cases, or even if we had 100 cases I do not think it would affect us. But once you open up the allocations to review you are going to have thousands and thousands of them coming up because the average fellow who wants to get materials for a certain purpose is going to fight to the finish.

Mr. JENNINGS. My observation is that before a man will go into court he has got to have a pretty good case and has got to be pretty sure he is right; he has to be very much aggrieved before he will go into courts of law, go to the expense—and of course he knows he will not have much chance unless he has a good case, when he is going to have to fight the United States Government. My observation is that the average fellow is a rather wholesome individual; the average citi-

zen is a patriotic citizen, and I think we can safely assume that the great majority of them are, but the whole purpose of this amendment is to relieve the fellow who feels that he has been greatly injured.

The CHAIRMAN. Gentlemen of the committee, we appreciate that these are very important people in the operation of the war. I believe that the members of the committee have pretty well in mind what is in the minds of these gentlemen and we do not want to take any more of their time than necessary. I think you will agree with the chairman that we do not have the right to hold them any further unless there are some points you wish cleared up. We are very much obliged to you for your contributions.

Mr. HOBBS. I just want to bring out for the record that the actual experience on appeals from denials of applications by the War Production Board has shown that now 9 out of 10 cases are corrected in accordance with the appeal taken by the citizen. Is that the fact?

Mr. KRUG. That is a fact.

Mr. HANCOCK. That has already been developed, has it not?

Mr. HOBBS. But some of these gentlemen were not here.

STATEMENT OF MR. PATTERSON—Continued

Mr. PATTERSON. There is one additional point, Mr. Chairman, that I might call to your attention: Let us take these two manufacturers, for instance, who were making toys and games and one of them gets an allotment for steel and the other does not, and the first one is in a labor-supply area where the present use of manpower for that purpose will not damage the prosecution of the war or production for war purposes, and the second is in a labor-shortage area and every person that is taken for the production of toys and games comes out of production of machine guns, ammunition, and so on, for our armed forces.

Now in all respects they may be in the same position, except for labor. Now are you going to submit that to a judge and say to the judge of the district court he should find in favor of the man who did not get material for his toys and games, materials that are non-essential, but it would involve the use of labor needed for war production? Would you leave it up to the district judge to say, "I cannot agree with you that this will interfere with the war for this manufacturer to have just as much materials as the other manufacturer?"

Mr. KEFAUVER. The judge would have to have information with respect to the use of manpower.

Mr. PATTERSON. Absolutely.

Mr. TOWE. These workers get out of war-production plants and go into toy-manufacturing plants? How do they do it?

Mr. PATTERSON. Well, they can do it; and they do it plenty of times.

Mr. MICHENER. Right in this connection: I am in one of the labor-scarcity areas in Michigan, and in a toy plant; as long as the toy plant is in operation the man works there. That work is not essential to the war effort, but when the man ceases to work there, he must go into an essential plant if he works in that area.

Mr. TOWE. Judge Patterson made the statement that if we pass this amendment it would be possible to allocate to a toy factory in an area where there was a critical manpower shortage, the effect of which would be to take men out of war-production plants. Now if men are

going into toy-manufacturing plants because there is a shortage of labor in the critical industries I would like to have you tell me how he can get out.

Mr. PATTERSON. There have been cases in labor-shortage areas—and most of the production goes on in areas, the essential and non-essential production, or the least essential war production.

Mr. TOWE. But how could the man get out of such a war plant?

Mr. PATTERSON. Suppose the plant shuts down its toy manufacturing, you have a chance to pick up an employee for some war-production purposes.

STATEMENT OF H. S. HENSEL, GENERAL COUNSEL, NAVY DEPARTMENT

The CHAIRMAN. Is there anybody else who wishes to be heard on this matter?

Mr. HENSEL. Mr. Chairman, manpower is handled on a sort of contract basis with certificates of availability and if a man leaves a war-production plant he cannot get another job in another war plant unless he has a certificate of availability.

First, that is only good for 60 days, and if the company desires, they can ignore the lack of a certificate of availability and the only recourse we have over them is that the United States Employment Service will not recruit employees for them.

Of course, that is no help to the toy manufacturer. He cannot get people in that way. I know of no penalty which will keep a person from working in a toy-manufacturing plant. Of course, the employee can wait 60 days. He can take a vacation for 60 days.

So the only way we can keep manpower on war work is through the allocation of materials through a central agency.

Briefly I would like to give you the Navy Department's view concerning this matter, and I would like to emphasize two things that may have been touched upon and I will not elaborate on. In the administration of a job of this kind I do not think it possible to divide the responsibility; I think you have got to put it on someone, and therefore I do not think that it can be done by many district courts or many agencies whether it be the courts or the Administration. I think the administering of it necessarily has to be done by a single agency, and I personally feel the function is administrative and not judicial.

Mr. WALTER. Do you not think it possible to legislate in order to prevent one company from getting an unfair advantage of another company, or one group over another group?

Mr. HENSEL. I would do everything possible to prevent that, and I think always we must recognize there is a possibility of something going wrong.

Mr. WALTER. You see great possibilities of that happening in this law and its administration, do you not?

Mr. HENSEL. I see possibilities, and I see greater possibilities if it is split up among the courts who do not have the knowledge needed to pass on the question. I personally would rather have the man who knows the facts, and who is charged with the responsibility of making a finding, and trust to his making an equitable decision; I would take

my chances that he might go astray, but I would prefer that to someone who did not have the information.

Mr. WALTER. Have you seen the language of this proposed amendment?

Mr. HENSEL. I have not.

Mr. WALTER. How can you oppose the amendment if you have not seen it?

Mr. HENSEL. I am opposing the theory of it.

Mr. WALTER. Would you object to my reading it?

Mr. HENSEL. No; I would like you to do so.

Mr. WALTER. I think it would be a good thing to know what is in the amendment before you pass on it.

Mr. HENSEL. I am glad to hear it. I understand the purpose is to split this up so the district courts of the country would have jurisdiction over the amount of material allocated.

Mr. WALTER. No. Let me read it and you might change your mind about opposing it. This is the jurisdiction concerned. [Reading:]

An arbitrary or capricious failure or refusal to grant allocations of surpluses available for the use of civilians not engaged in war production.

Mr. HENSEL. I think that my comments are applicable to that wording. I think you would find your district courts overrun with applications for review. I can understand how a district court in New Jersey might pass upon an application in New Jersey. But how a New Jersey judge can pass upon an application that takes away material from some man in Texas without knowing what that man in Texas might have—that is something I could not understand.

Mr. WALTER. But the man in New Jersey would have to make a very strong case before a preliminary injunction is granted, supposing it was, and he would have to show there was a failure to act and that the action of the agency was capricious and arbitrary in respect to making the allocation of material to one company in favor of another.

Mr. HENSEL. I think you will find the courts saying: "The charge of capricious and arbitrary action must be decided by the evidence before the court. Now the evidence that is introduced may or may not be true, but I am going to pass on what is in the record."

You may not have the knowledge of all the other things needed to make an equitable decision.

Mr. GWYNNE. All you want to do is have it decided by the so-called experts?

Mr. HENSEL. I want to have it done by one person who accepts the responsibility for the war effort.

Mr. GWYNNE. That would mean you would pick them?

Mr. HENSEL. I do not care what agency does it; I am willing for you to take a man out of Congress and have him become the head of it. I have been here 4 years and I do not understand everything about these allocations and I certainly do not think that I would be capable of passing upon them.

Mr. GWYNNE. That raises the old fundamental question of certain groups thinking there is no one else competent except the little group of the so-called experts. Is that not what you come to?

Mr. HENSEL. I would say if this group is not considered competent get an entirely new group, pick a new group of experts, if necessary, to handle the problem, but hold them responsible for it.

The CHAIRMAN. We are very much obliged to you gentlemen. The committee will go into executive session.

OFFICE OF WAR MOBILIZATION,
Washington, D. C., November 27, 1944.

HON. HATTON W. SUMNERS.

Chairman, Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR HATTON: While representatives of other agencies have testified before your committee on the extension of the Second War Powers Act, I think I should let your committee know how essential to the continued effective administration of the war production and economic stabilization program I consider the extension of this act.

The Second War Powers Act has provided the framework of law within which has been mobilized the great productive resources of our people for war.

At no time has the statute been more needed than now. Delay now means not simply the postponement of a future campaign but the prolongation of battles now waging.

With so much at stake the Nation can afford no weakening of the powers necessary to employ our resources most efficiently in accordance with the changing requirements of the war situation.

To secure the most effective employment of our resources for war, it is essential to maintain an orderly and stable economy at home. The Second War Powers Act authorizes the orderly allocation of scarce materials for essential civilian as well as military production and affords the legal basis for rationing which is a vital part of our stabilization program.

While it is expected that considerable cutbacks in war production should be possible after VE-day, it is still too early to predict when and at what rates these cutbacks will come. Until they do come, most of the existing restrictions will be critically needed; and after these cutbacks occur it will not be possible to remove all restrictions at once, although it is hoped that most of them may be rapidly eliminated. Some critical shortages, however, will persist. The basic authority to prevent these shortages from causing avoidable hardship must be maintained if we are to protect our economy, as the Congress intended, during the war, including the period of immediate transition to peace, from the stresses and strains which war conditions have imposed upon it.

To do this, the Second War Powers Act should be extended in substantially its present form.

Sincerely yours,

JAMES F. BYRNES,
Director.

WAR PRODUCTION BOARD,
Washington, D. C., December 2, 1944.

HON. HATTON SUMNERS.

Chairman of the Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR JUDGE SUMNERS: At the recent hearings before your committee on the extension of the Second War Powers Act, frequent reference was made to the alleged abuse on the part of the War Production Board in the distribution of 100 shotguns.

I was asked if I could ascertain the facts in connection with this situation.

On investigation, I find that the shotguns in question were a portion of a supply of surplus property which were being disposed of by the Government and were not a matter with which the War Production Board had anything to do.

I think it would be helpful if this could be included in the record as it was a matter for which we received considerable criticism during the hearings.

Very truly yours,

LAURENCE M. LOMBARD,
Assistant General Counsel.

(Whereupon the committee proceeded to the consideration of business in executive session, after which it adjourned.)

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AMENDING PUBLIC LAW 507, SEVENTY-SEVENTH CONGRESS, SECOND session, AN ACT TO FURTHER EXPEDITE THE PROSECUTION OF THE WAR, APPROVED MARCH 27, 1942, KNOWN AS THE SECOND WAR POWERS ACT, 1942

NOVEMBER 28, 1944.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. HOBBS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4993]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4993) to amend Public Law 507, Seventy-seventh Congress, second session, an act of Congress to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942, after hearings and careful consideration thereof, report the same favorably to the House, with amendments, with the recommendation that, as amended, the bill do pass.

The committee amendments are as follows:

1. On page 1, line 9, after the word "the" insert "two Houses of".

This amendment was approved by the committee for the sake of technical accuracy inasmuch as it might be contended hypercritically that "the Congress" included the President, since the President is usually empowered and required to approve or veto actions of the two Houses of Congress. However, as the sole purpose of using the form of a concurrent resolution for the action of the two Houses of the Congress is frequently to obviate the necessity of Presidential action, and especially in this case where in the pending legislation itself the President is given the power to designate an earlier termination of the act being amended merely by his own ipse dixit, there should be no question as to what the pending measure means in this regard.

2. Title III of the Second War Powers Act, 1942 (Public Law 507, 77th Cong., 2d sess.), is hereby amended by adding at the end thereof:

(9) The district courts of the United States are hereby given exclusive jurisdiction to enjoin, or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer or agency, acting or purporting to act hereunder, or under any other law or authority.

Any action to enjoin or set aside any such order shall be brought within five days after the service thereof.

No suspension order shall take effect within five days after it has been served, or, if an application for a stay is made to the issuing authority within such five-day period, until the expiration of five days after service of an order denying the stay.

The venue of any such suit shall be in the district court of the United States for the district in which the petitioner has his principal place of business; and the respondent shall be subject to the jurisdiction of such court after ten days before the return day of the writ, either when (1) process shall have been served on any district manager or other agent of the respondent of similar or superior status; or (2) notice by registered mail shall have been given to respondent, or to the office of the Attorney General of the United States.

The second and only other amendment adds at the end of title III of the Second War Powers Act, 1942 (Public Law 507, 77th Cong., 2d sess.), a new section, (9).

This amendment gives the district courts of the United States exclusive jurisdiction to enjoin, or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension that may have been issued by any person, officer, or agency, acting or purporting to act under that title, or under any other law or authority; fixing the time limit within which any such action must be brought; and fixing the venue of any such suit both as to petitioner and respondent, as well as the *modus operandi* to render the respondent subject to the jurisdiction of the district court issuing the writ of injunction.

The purpose of this amendment is to assure any holder of a priority or allocation granted by any person, officer, or agency, under title III, or under any other law or authority, whenever the same may have been ordered suspended by the issuing authority the right to invoke the aid of the United States district court for the district in which the petitioner has his principal place of business, to enjoin any such suspension order, and to give that district court jurisdiction both of the subject matter and of the issuing authority.

The amendatory bill itself simply extends the life of titles I to VII, inclusive, and of titles IX, XI, and XIV of the Second War Powers Act, 1942 (Public Law 507, 77th Cong., 2d sess.) and the amendment to any existing law made by such title, from December 31, 1944, to December 31, 1945, subject to earlier termination by concurrent resolution of the two Houses of Congress, or by order of the President.

CHANGES IN EXISTING LAW

In compliance with clause 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law in which no change is proposed is shown in roman, new matter is printed in *italic*, and existing law proposed to be omitted is enclosed in black brackets):

Title III of the Second War Powers Act, 1942 (Public Law 507, 77th Cong., 2d sess.) is amended to read as follows:

TITLE III—PRIORITIES POWERS

SEC. 301. Subsection (a) of section 2 of the Act of June 28, 1940 (54 Stat. 676), entitled "An Act to expedite national defense, and for other purposes," as amended by the Act of May 31, 1941 (Public Law Numbered 89, Seventy-seventh Congress), is hereby amended to read as follows:

"SEC. 2. (a) (1) That whenever deemed by the President of the United States to be in the best interests of the national defense during the national emergency declared by the President on September 8, 1939, to exist, the Secretary of the Navy is hereby authorized to negotiate contracts for the acquisition, construction, repair, or alteration of complete naval vessels or aircraft, or any portion

thereof, including plans, spare parts, and equipment therefor, that have been or may be authorized, and also for machine tools and other similar equipment, with or without advertising or competitive bidding upon determination that the price is fair and reasonable. Deliveries of material under all orders placed pursuant to the authority of this paragraph and all other naval contracts or orders and deliveries of material under all Army contracts or orders shall, in the discretion of the President, take priority over all deliveries for private account or for export: *Provided*, That the Secretary of the Navy shall report every three months to the Congress the contracts entered into under the authority of this paragraph: *Provided further*, That contracts negotiated pursuant to the provisions of this paragraph shall not be deemed to be contracts for the purchase of such materials, supplies, articles, or equipment as may usually be bought in the open market within the meaning of section 9 of the Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (49 Stat. 2036; U. S. C., Supp. V, title 41, secs. 35-45): *Provided further*, That nothing herein contained shall relieve a bidder or contractor of the obligation to furnish the bonds under the requirements of the Act of August 24, 1935 (49 Stat. 793; 40 U. S. C. 270 (a) to (d)): *Provided further*, That the cost-plus-a-percentage-of-cost system of contracting shall not be used under the authority granted by this paragraph to negotiate contracts; but this proviso shall not be construed to prohibit the use of the cost-plus-a-fixed-fee form of contract when such use is deemed necessary by the Secretary of the Navy: *And provided further*, That the fixed fee to be paid the contractor as a result of any contract entered into under the authority of this paragraph, or any War Department contract entered into in the form of cost-plus-a-fixed-fee, shall not exceed 7 per centum of the estimated cost of the contract (exclusive of the fee as determined by the Secretary of the Navy or the Secretary of War, as the case may be).

"(2) Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—

"(A) Contracts or orders for the government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled 'An Act to promote the defense of the United States';

"(B) Contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States;

"(C) Subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this subsection (a).

Deliveries under any contract or order specified in this subsection (a) may be assigned priority over deliveries under any other contract or order; and the President may require acceptance of and performance under such contracts or orders in preference to other contracts or orders for the purpose of assuring such priority. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

"(3) The President shall be entitled to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, any person (which, for the purpose of this subsection (a), shall include any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not), and make such investigations as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this subsection (a).

"(4) For the purpose of obtaining any information, verifying any report required, or making any investigation pursuant to paragraph (3), the President may administer oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: *Provided*, That the production of a person's books, records, or other documentary evidence shall not be required at any place

other than the place where such person resides or transacts business, if, prior to the return date specified in the subpoena issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpoena, or in any action or proceeding which may be instituted under this subsection (a), on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The President shall not publish or disclose any information obtained under this paragraph which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the President determines that the withholding thereof is contrary to the interest of the national defense and security; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding \$1,000, or be imprisoned not exceeding two years, or both.

"(5) Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

"(6) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States and the courts of the Philippine Islands shall have jurisdiction of violations of this subsection (a) or any rule, regulation, or order or subpoena thereunder, whether heretofore or hereafter issued, and of all civil actions under this subsection (a) to enforce any liability or duty created by, or to enjoin any violation of, this subsection (a) or any rule, regulation, order, or subpoena thereunder whether heretofore or hereafter issued. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; and subpoena for witnesses who are required to attend a court in any district in any such case may run into any other district. No costs shall be assessed against the United States in any proceeding under this subsection (a).

"(7) No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

"(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe."

"(9) *The District Courts of the United States are hereby given exclusive jurisdiction to enjoin, or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer, or agency, acting or purporting to act hereunder, or under any other law or authority.*

"Any action to enjoin or set aside any such order shall be brought within five days after the service thereof.

"No suspension order shall take effect within five days after it has been served, or, if an application for a stay is made to the issuing authority within such five-day period, until the expiration of five days after service of an order denying the stay.

"The venue of any such suit shall be in the District Court of the United States for the District in which the petitioner has his principal place of business; and the

respondent shall be subject to the jurisdiction of such Court after ten days before the return day of the writ, either when (1) process shall have been served on any District Manager or other agent of the respondent of similar or superior status; or (2) notice by registered mail shall have been given to respondent, or to the office of the Attorney General of the United States."

Title XV of the Second War Powers Act, 1942 (Public Law 507, 77th Cong., 2d sess.), is amended to read as follows:

TITLE XV—TIME LIMIT AND SHORT TITLE

SEC. 1501. Titles I to **[IX]** VII, inclusive, and titles IX, XI and XIV of this Act, and the amendments to existing law by any such title, shall remain in force only until December 31, **[1944]** 1945, or until such earlier time as the *two Houses of Congress* by concurrent resolution, or the President, may designate, and after such amendments cease to be in force any provision of law amended thereby shall be in full force and effect as though this Act had not been enacted; but no court proceeding brought under any such title shall abate by reason of the termination hereunder of such title.



Union Calendar No. 648

78TH CONGRESS
2D SESSION

H. R. 4993

[Report No. 1959]

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1944

MR. SUMNERS of Texas introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 28, 1944

Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed

[Insert the part printed in italic]

A BILL

To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title XV, section 1501, of the Second War Powers
4 Act, 1942, approved March 27, 1942, is amended to read
5 as follows:

6 “SEC. 1501. Titles I to VII, inclusive, and titles IX,
7 XI, and XIV of this Act, and the amendments to existing
8 law made by any such title, shall remain in force only until

1 December 31, 1945, or until such earlier time as the *two*
2 *Houses of Congress* by concurrent resolution, or the Presi-
3 dent, may designate, and after such amendments cease to be
4 in force any provision of law amended thereby shall be in
5 full force and effect as though this Act had not been enacted;
6 but no court proceeding brought under any such title shall
7 abate by reason of the termination hereunder of such title.”

8 *Title III of the Second War Powers Act, 1942, is*
9 *hereby amended by adding at the end thereof the following:*

10 “(9) *The district courts of the United States are hereby*
11 *given exclusive jurisdiction to enjoin or set aside, in whole*
12 *or in part, any order suspending any priority or allocation,*
13 *or denying a stay of any such suspension, that may have*
14 *been issued by any person, officer, or agency, acting or pur-*
15 *porting to act hereunder, or under any other law or authority.*

16 “*Any action to enjoin or set aside any such order shall*
17 *be brought within five days after the service thereof.*

18 “*No suspension order shall take effect within five days*
19 *after it has been served, or, if an application for a stay*
20 *is made to the issuing authority within such five-day period,*
21 *until the expiration of five days after service of an order*
22 *denying the stay.*

23 “*The venue of any such suit shall be in the district court*
24 *of the United States for the district in which the petitioner*
25 *has his principal place of business; and the respondent shall*

1 *be subject to the jurisdiction of such court after ten days*
2 *before the return day of the writ, either when (1) process*
3 *shall have been served on any district manager or other agent*
4 *of the respondent of similar or superior status; or (2) notice*
5 *by registered mail shall have been given to respondent, or*
6 *to the office of the Attorney General of the United States."*

78TH CONGRESS
2d Session

H. R. 4993

[Report No. 1959]

A BILL

To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

By Mr. SUMNERS of Texas

JUNE 9, 1944

Referred to the Committee on the Judiciary

NOVEMBER 28, 1944

Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed

state of the Union for the consideration of the bill (H. R. 4216) to provide more efficient dental care for the personnel of the United States Navy. That after general debate, which shall be confined to the bill and shall be continued not to exceed 1 hour, to be equally divided and controlled by the chairman and the ranking minority member of the Committee on Naval Affairs, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendments, the Committee shall rise and report the same to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion, except one motion to recommit.

EXTENSION OF SECOND WAR POWERS ACT

Mr. SABATH, from the Committee on Rules, reported the following privileged resolution (H. Res. 660) which was referred to the House Calendar and ordered printed:

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 4993) to amend Public No. 507, Seventy-seventh Congress, second session, an act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942; that after general debate, which shall be confined to the bill and shall be continued not to exceed 2 hours, to be equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendments, the Committee shall rise and report the same to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion, except one motion to recommit.

SMALLER WAR PLANTS CORPORATION

Mr. SABATH, from the Committee on Rules, reported the following privileged resolution (H. Res. 661), which was referred to the House Calendar and ordered printed:

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (S. 2004) to amend the act entitled "An act to mobilize the productive facilities of small business in the interests of successful prosecution of the war, and for other purposes," approved June 11, 1942; that after general debate, which shall be confined to the bill and shall be continued not to exceed 1 hour, to be equally divided and controlled by the chairman and the ranking minority member of the Committee on Banking and Currency, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendments, the Committee shall rise and report the same to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion, except one motion to recommit.

SAFEGUARDING ADMISSION OF EVIDENCE IN CERTAIN CASES

Mr. SABATH, from the Committee on Rules (on behalf of Mr. SLAUGHTER), re-

ported the following privileged resolution (H. Res. 662), which was referred to the House Calendar and ordered printed:

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 3690) to safeguard the admission of evidence in certain cases; that after general debate, which shall be confined to the bill and shall be continued not to exceed 1 hour, to be equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendments, the Committee shall rise and report the same to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion, except one motion to recommit.

THE TRUTH ABOUT PEARL HARBOR

Mr. SHORT. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks and include therein a joint resolution I am introducing today.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. SHORT. Mr. Speaker, truth though crushed to earth will rise again and, like murder, though it hath no tongue, will speak with most miraculous organ.

The American people have not been told the truth about Pearl Harbor. They want to know the truth and are entitled to know it in the name of both the living and the dead. Someday we will know it, though from my exasperating and painful experience with this particular matter I dare not prophesy when, but I repeat, sir, someday we will know the complete story and the whole truth about the most shameful and disgraceful massacre of our armed forces in the annals of our country.

And when the complete story is told and the whole truth known, the American people will be shocked, angered, and grieved—deeply grieved and sorely wounded. Perhaps we shall have to wait for future historians to place the responsibility for this most tragic chapter in our Nation's history, but that does not relieve us from at least attempting to do our duty now. We certainly should exert every effort to prevent a replica of the Dreyfus case in the United States with all its unfortunate implications. Truth will ultimately triumph.

Mr. Speaker, last December a resolution passed unanimously the House of Representatives and the Senate of the United States Congress and was signed by the President, which became Public Law No. 208 of the Seventy-eighth Congress. That law extended the statute of limitations for 6 months from December 7, 1943 to June 7, 1944, for the prosecution, trial, and punishment of any person or persons in military or civil capacity, involved in any manner in connection with the Pearl Harbor catastrophe of December 7, 1941.

For reasons best known to this administration, no effort was put forward to

bring about the court martial of Admiral Kimmel and General Short or the trial of any other person involved. So Public Law 339 was passed last June by the Seventy-eighth Congress and signed by the President, which further extended the statute of limitations for an additional period of 6 months until December 7, 1944. Under this law the Secretary of War and the Secretary of the Navy were severally directed to proceed forthwith with investigations into the facts surrounding the Pearl Harbor catastrophe and commence such proceedings against such persons as the facts may justify.

Both the War and Navy Departments set up their respective committees for holding extensive hearings and after rather exhaustive investigations, filed their reports, respectively, with the Secretary of War and the Secretary of the Navy, on or about October 20, 1944. However, no proceedings have been commenced pursuant to the direction in Public Law 339.

For some strange and unknown reason the findings of the War Department's board of investigation and the Navy Department's court of inquiry are shrouded in mystery and clothed with secrecy. Both the Congress and the American people are still in the dark concerning this awful tragedy which took the lives of thousands of American men, cost the taxpayers hundreds of millions of dollars, and indefinitely prolonged the war in the Pacific.

Mr. Speaker, almost 3 years have elapsed since Pearl Harbor. It is inconceivable that the truth concerning this catastrophe could now aid and abet the enemy. Indeed the enemy perhaps knows certain secrets which have been hidden from the American people.

Both Maj. Gen. Walter C. Short and Rear Admiral Husband E. Kimmel, who were in command of our armed forces at the Pearl Harbor disaster, have each severally waived the statute of limitations against any court martial, but no other officer or person in military or civil capacity has waived the statute of limitations against any court martial or other proceedings in connection with the Pearl Harbor catastrophe. Unless the Secretary of War and the Secretary of the Navy commence proceedings immediately as directed in Public Law 339 against any officer or person who may not have waived the statute of limitations, they will be forever barred on December 7, 1944, unless such proceedings are commenced before then or the statute is further extended.

Because of this present serious situation, I am today introducing into the House of Representatives a joint resolution. Some people may consider the preamble superfluous, as most whereas paragraphs usually are, but in my opinion it does state the factual chronology of the extensions of the statute and the executive action under them.

This joint resolution is not at all complicated and it is easy to understand. It does four things:

Section 1 simply extends the statute for a further period of 6 months in addition to the extensions provided for in

Public Law 208 and Public Law 339, both of the Seventy-eighth Congress.

Section 2 severally directs the Secretary of War and the Secretary of the Navy to transmit forthwith to the Congress, the records, including the findings of fact, opinion, and recommendations of any board of investigation or court of inquiry, conducted pursuant to Public Law 339.

Under section 3 the Secretary of War and the Secretary of the Navy are severally directed to commence forthwith such proceedings against such persons as the facts in the reports of their respective committees may justify.

Section 4 is simply a saving clause. Nothing in this resolution shall relieve in any way the Secretary of War or the Secretary of the Navy of any obligation imposed upon either of them under the provisions of Public Law 339, Seventy-eighth Congress.

Mr. Speaker, in fairness to all concerned, I do not see how anyone could object to this resolution. It is not exactly what I would personally prefer. What I have asked for since the day of Pearl Harbor is the natural, normal, and orderly procedure in such matters, namely, a court martial for military parties involved, who personally want an open and public court martial, and a free, open, public trial for any civilians who might be involved.

At no time or in any manner, in or out of Congress, have I condemned or condoned Admiral Kimmel or General Short. I am neither attacking nor defending them now as I do not now know that they deserve either prosecution or defense. All that I have insisted is that they be given their day in court, to which every free-born American is entitled. They have asked for public trial and have waived the statute of limitations, but still somebody, somewhere does not want the truth known or the story told.

Mr. Speaker, honest men have nothing to hide. Truth and competence need no shield to defend them. This is a grave matter which rises far above the hopes, ambitions, and interests of any individual. Justice must be done and responsibility must be placed for such an appalling and unparalleled disaster where it rightfully belongs.

Why not have an open and public trial for all men involved? The late Secretary Knox in August 1943 in writing promised Admiral Kimmel an open and public court martial when the Secretary got the admiral to waive the statute of limitations. Secretary Knox then stated that the public interest and safety would permit a court-martial trial at that time, but that it would be impracticable to do so until witnesses who were on war duties would be available. Practically all of the witnesses who had any knowledge of the issue testified before the Navy Court of Inquiry which conducted hearings for several weeks. Consequently, the only obstacle that Secretary Knox saw to an immediate and public trial has been met.

Mr. Speaker, there is no reasonable excuse for further procrastination and no justification for further delay in this vital matter. The resolution I am intro-

ducing today should receive immediate consideration by the appropriate committee to which it is referred and passed by unanimous vote of this House. Let it be said in all the years to come that we in this body have faithfully met the challenge and fearlessly discharged our duty.

The resolution follows:

Whereas by Public Law 208, Seventy-eighth Congress, the statute of limitations for the prosecution, trial, and punishment of any person or persons in military or civil capacity involved in any manner in connection with the Pearl Harbor catastrophe of December 7, 1941, or involved in any other possible or apparent dereliction of duty or crime or offenses against the United States in connection therewith was extended until June 7, 1944; and

Whereas by Public Law 339, Seventy-eighth Congress, the statute of limitations was further extended for an additional period of 6 months, until December 7, 1944; and

Whereas in section 2 of the said Public Law 339 the Secretary of War and the Secretary of the Navy were severally directed to proceed forthwith with investigations into the facts surrounding the Pearl Harbor catastrophe, and to commence such proceedings against such persons as the facts may justify; and

Whereas the Secretary of War caused an investigation to be conducted by an Army board of investigation; and

Whereas the Secretary of the Navy caused an investigation to be made by a Navy court of inquiry; and

Whereas the Army board of investigation and Navy court of inquiry have completed their investigations and filed their reports respectively with the Secretary of War and the Secretary of the Navy on or about October 20, 1944; and

Whereas no proceedings have been commenced pursuant to the direction in said Public Law 339; and

Whereas Maj. Gen. Walter C. Short, United States Army, retired, commanding general of the Hawaiian Department at the time of the Pearl Harbor catastrophe, and Rear Admiral Husband E. Kimmel, United States Navy, retired, commander in chief of the Pacific Fleet at the time of the Pearl Harbor catastrophe, have each severally waived the statute of limitations against any court martial or other proceedings in connection with the Pearl Harbor catastrophe; and

Whereas no other officer or person in military or civil capacity has waived the statute of limitations against any court martial or other proceedings in connection with the said Pearl Harbor catastrophe; and

Whereas the right of the Secretary of War and the Secretary of the Navy to commence proceedings, as directed in said Public Law 339, against any officer or person who may not have waived the statute of limitations will be forever barred on December 7, 1944, unless such proceedings are commenced before then, or the statute is further extended: Now, therefore, be it

Resolved, etc., That, effective as of December 7, 1943, all statutes, resolutions, laws, articles, and regulations affecting the possible prosecution of any person or persons, military or civil, connected with the Pearl Harbor catastrophe of December 7, 1941, or involved in any other possible or apparent dereliction of duty, or crime or offense against the United States, that operate to prevent the court martial, prosecution, trial, or punishment of any person or persons in military or civil capacity, involved in any matter in connection with the Pearl Harbor catastrophe of December 7, 1941, or involved in any other possible or apparent dereliction of duty or crime or offense against the United States, are hereby extended for a further period of 6 months, in addition to the extensions provided for in

Public Law 208 and Public Law 339, both of the Seventy-eighth Congress.

SEC. 2. The Secretary of War and the Secretary of the Navy are severally directed to transmit forthwith to the Congress the records, including the findings of fact, opinion, and recommendations of any board of investigation or court of inquiry, conducted pursuant to Public Law No. 339, Seventy-eighth Congress.

SEC. 3. The Secretary of War and the Secretary of the Navy are severally directed to commence forthwith such proceedings against such persons as the facts in the reports of the board of investigation of the Army, and the court of inquiry of the Navy may justify.

SEC. 4. Nothing in this act shall relieve in any way the Secretary of War or the Secretary of the Navy from any obligation imposed on either of them under the provisions of Public Law 339, Seventy-eighth Congress.

EXTENSION OF REMARKS

Mr. MUNDT. Mr. Speaker, I ask unanimous consent to extend my remarks in the Record and include a poem.

The SPEAKER. Is there objection to the request of the gentleman from South Dakota?

There was no objection.

[The matter referred to appears in the Appendix.]

HON. EDWARD R. STETTINIUS, JR.

Mr. MUNDT. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from South Dakota?

There was no objection.

Mr. MUNDT. Mr. Speaker, I believe the President of the United States should be congratulated on his selection of Edward R. Stettinius, Jr., as the new Secretary of State. As a member of the House Committee on Foreign Affairs during the past several years I have had frequent occasions to confer with Mr. Stettinius, individually, and I have also watched him in action before our committee. He is a splendid American and a highly able public servant.

His career in public life demonstrates that in America, in politics, as in business, a man can start at the bottom, and by studious devotion to high ideals he can work himself up to the top.

Cordell Hull in his long period of public service through his courteous demeanor and patient persistence has endeared himself to the people of this country and ingratiated himself with the people of the world. History will pass judgment on the success of his efforts, but all who know him can pay tribute to his sincerity. I predict that Mr. Stettinius is going to be a worthy successor to Cordell Hull and I hope that America will many times have occasion to congratulate itself on the service he will render as Secretary of State in these epochal times.

The challenges confronting Ed. Stettinius are tremendous. As he assumes his office he is entitled to the prayers and hopes of all the world that he may exercise caution, candor, and correctness in the work that lies ahead.

EXTENSION OF REMARKS

Mr. MCGREGOR. Mr. Speaker, I ask unanimous consent to revise and extend

DIGEST OF PROCEEDINGS OF CONGRESS OF INTEREST TO THE DEPARTMENT OF AGRICULTURE
(Issued November 30, 1944, for actions of Wednesday, November 29, 1944)

(For staff of the Department only)

CONTENTS

Banking and currency..5	Land grants.....8	St. Lawrence Waterway... 3,13
Education.....6,14	Personnel.....4	Transportation..1,3.8.13
Flood control.....7	Price control.....12	Veterans.....4,8
Foreign trade.....11	Reclamation.....8	War powers.....2
Forestry.....1,10	Road authorizations...1	
Imports.....11	Small business.....9	

HOUSE

ROAD AUTHORIZATIONS. Passed S. 2105, the road-authorizations bill, with the language of H. R. 4915 as amended (pp. 8691-707).

Agreed to the following additional amendments before passing the Senate bill:

By Rep. Wolcott, Mich., to provide for deduction of advances of funds to any State, for expeditious project completion, from the succeeding year's apportionment (p. 8698).

By Rep. Sauthoff, Wis., to prohibit advance payments to any State if such State has diverted motor-vehicle revenues intended for highway purposes to other uses (p. 8698).

By Rep. Abernethy, Miss., to increase the authorization for national-park roads and trails from \$15,000,000 to \$30,000,000 (pp. 8699-701).

By Rep. Case, S. Dak., to authorize \$8,000,000 annually for Indian reservation roads (pp. 8701-2).

By Rep. Randolph, W. Va., to strike out Sec. 11, providing for aircraft flight strips adjacent to public highways (p. 8702).

Rejected the following amendments:

By Rep. Gillie, Ind., to authorize the use of funds under this act for the rerouting, etc., of railway tracks when a State Highway Commission deems it to be in the public interest (pp. 8693-6).

By Rep. Beall, Md., to authorize use of 50% of State apportionment for the construction of toll roads (p. 8697).

By Rep. Hope, Kans., to increase the authorization for forest-development roads from \$12,500,000 to \$25,000,000 (pp. 8698-9).

By Rep. Welch, Calif., to provide for "the building of roads in defense areas" (pp. 8704-7).

By Rep. Miller, Conn., to strike out Sec. 12, requiring State and PRA approval of the signs installed or placed by any public authority, (pp. 8705-7).

By Rep. Gifford, Pa., to provide for approval of the State and PRA of any signs placed "adjacent to" highways (p. 8707).

Rep. Stewart's amendment to increase the Federal share from 60% to 75% was ruled out on a point of order by Rep. Wolcott, Mich. (pp. 8696-7). Rep. Wolcott, in reply to Rep. Harris, Ark., stated that the provision in his amendment which was agreed to November 28, to provide that the "first post-war fiscal year shall be the fiscal year 1945," could be worked out by the conferees (p. 8691).

2. WAR POWERS. Agreed to the resolution providing for consideration of H. R. 4993, to extend the Second War Powers Act (pp. 8709-10).

This bill (see Digest 164) extends until not later than December 31, 1945, the following titles of the Second War Powers Act:

- I, emergency ICC powers over motor and water carriers;
- II, acquisition and disposition of property;
- III, priorities powers;
- IV, purchase of Government obligations by the Federal Reserve banks;
- V, waiver of navigation and inspection laws;
- VI, power to requisition;
- VII, political activity;
- IX, free postage for members of armed forces;
- XI, acceptance of conditional gifts to further the war program; and
- XIV, utilization of vital war information.

The bill amends Title III so as to provide for judicial review of suspension orders by the U. S. district court for the district in which the petitioner has his principal place of business.

The bill does not extend the following titles of the Act:

- VIII, protection of war industries and protection of resources subject to forest fire hazards;
- X, naturalization of members of the armed forces;
- XII, coinage of 5-cent pieces;
- XIII, inspection and audit of war contractors.

SENATE

3. ST. LAWRENCE SEAWAY. Sen. Capper, Kans., inserted telegrams from the Southwestern Interstate Coal Operators Assn. and the United Mine Workers of Kansas and Missouri opposing the proposed St. Lawrence waterway project (p. 8661).

Sen. Aiken, Vt., discussed Cordell Hull's work on behalf of the St. Lawrence waterway (pp. 8683-6).

4. VETERANS; PERSONNEL. Passed as reported H. R. 5386, to change the period from 40 days to 90 days during which a veteran may make application for the job which he held at the time of his induction; and to provide that if hospitalized for not more than a year following his discharge, the 90-day time shall not begin to run until the termination of his hospitalization (p. 8688).

5. BANKING AND CURRENCY. Passed as reported S. 1954, to extend until Dec. 31, 1945, the act authorizing the use for war purposes of Government-owned silver (pp. 8682-3).

6. EDUCATION BROADCASTS. Interstate Commerce Committee reported with an amendment S. 1957, to amend the Communications Act of 1934 so as to prohibit interference with the broadcasting of noncommercial cultural or educational programs (S. Rept. 1233) (p. 8661).

7. FLOOD CONTROL. Continued debate on H. R. 4485, the flood-control bill (pp. 8664-82, 8686-8).

Agreed to the committee amendment authorizing appropriation of funds to begin the development of the Missouri River basin by the War and Interior Departments (pp. 8676-7).

Agreed to amendments by Sen. O'Mahoney, Wyo., to limit the use of waters for navigation (p. 8670), to provide for specific congressional approval of Interior projects if objected to by War or a State (pp. 8671-2), and to provide for use of War Department projects for irrigation (pp. 8675-6).

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

EXTENSION OF REMARKS

Mr. HARRIS. Mr. Speaker, I ask unanimous consent that at the conclusion of the remarks I made in the Committee today I may be permitted to include a letter I received from W. W. Mitchell, of the State highway department, under date of November 23, 1944.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

(Mr. GORE asked and was given permission to extend his own remarks in the Appendix of the RECORD and include an editorial.)

PERMISSION TO ADDRESS THE HOUSE

Mr. COX. Mr. Speaker, I ask unanimous consent that on Thursday of next week, after disposition of all matters on the Speaker's desk and at the conclusion of any special orders heretofore entered, our colleague from Texas [Mr. DIES] may be privileged to address the House for 1 hour.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

EXTENSION OF SECOND WAR POWERS ACT

Mr. SABATH. Mr. Speaker, I call up House Resolution 660 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 4993) to amend Public, No. 507, Seventy-seventh Congress, second session, an act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942; that after general debate, which shall be confined to the bill and shall be continued not to exceed 2 hours, to be equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendments, the Committee shall rise and report the same to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion, except one motion to recommit.

Mr. SABATH. Mr. Speaker, later on I shall yield the usual 30 minutes to the gentleman from New York [Mr. FISH].

The rule makes in order the bill—H. R. 4993—proposing an extension of the Second War Powers Act enacted in 1942, which expires this year, to December 31, 1945, unless sooner terminated by concurrent action of both Houses or by proclamation of the President. The rule provides for 2 hours' general debate, after which the bill will be read for amendment under the 5-minute rule.

The Committee on the Judiciary approved and will submit as committee

amendments two amendments, one which I consider significant in that it will to some extent tend to restrict some of the departments and agencies, but I am informed that it is a compromise amendment that was agreed to after many conferences and therefore I shall not oppose it. Rumors have reached me, however, that further amendments to this legislation may be proposed on the floor of the House. I urge that all such proposals be rejected and that this legislation be passed as reported by the Committee on the Judiciary. This is no time to hamstring or confuse the vast and intricate system based upon this legislation which has made possible the remarkable achievement of American industry in its war-production effort. As I have stated, I do not object to the amendments to the bill which have been recommended by the Committee on the Judiciary. One is of a clarifying character, and the other provides a method of judicial review and does no more than extend to all agencies exercising the allocation power the provisions for judicial review of suspension orders contained in the Stabilization Extension Act of 1944 with respect to Office of Price Administration suspension orders. Furthermore, the right to this judicial review comes into being only after all administrative remedies have been exhausted by the persons claiming it. It seems to me fair that in such case a person against whom a suspension order has been issued for violating the regulations should be entitled to have the question of his wrongdoing reviewed by a court.

Mr. Speaker, for the time being I shall not take up any more time, and yield now 30 minutes to the gentleman from New York [Mr. FISH], reserving the remainder of my time.

Mr. FISH. Mr. Speaker, I yield myself 5 minutes.

This rule comes to the House without any opposition. It is the usual open rule, and makes amendments in order. The bill itself merely extends the War Powers Act of 1942 until December 31, 1945. The gentleman from Illinois [Mr. SABATH] the distinguished chairman of the Committee on Rules, seems to think that the proposed amendment which gives certain powers to the Federal courts to review decisions by governmental agencies, might hamstring some of those agencies. I am sure that that amendment is meant primarily to protect the interests of the American people, of the public, and not to promote fees for lawyers, as the gentleman suggested. It is in the interest of the American people, and I hope it is aimed at restoring representative and constitutional government in the United States, and, above all is in the interest of restoring the legislative powers of the Congress itself. We have a vital concern in that, because these various bureaus and agencies are usurping our legislative powers almost daily in defiance of the Constitution and in defiance of the Congress. The amendment seems to me to be an admirable one.

Mr. Speaker, I have no requests for time. I understand that as soon as this rule is adopted the House will adjourn

and not continue with the consideration of the bill this evening. If that is the case, I think the House should be so advised. Is that correct, I ask the gentleman from Illinois [Mr. SABATH]?

Mr. SABATH. I really do not know.

The SPEAKER. That is correct.

Mr. FISH. Mr. Speaker, I would just like to make a comment in view of the nature of the bill, the extension of the War Powers Act, extending these vast powers to the President in the midst of the greatest war in the history of the world and, of course, of the United States.

Mr. Speaker, in the history of our country no minority party has ever given such all-out and loyal support to the President and to the Commander in Chief as has the minority, the Republican Party, on all war measures since the declaration of war. There has been no partisanship whatsoever on these great issues involving the prosecution of the war and the winning of the war at the very earliest possible moment. Republicans and Democrats are united in their desire to win this war as quickly as possible and then to bring our soldiers back home to America.

I, as a minority member, want to emphasize that we have given—now that the campaign is over—since Pearl Harbor, since the declaration of war, complete and loyal support on all administration war measures.

Prior to Pearl Harbor the minority supported appropriations for our armed forces—for the Army, the Navy, and the Air Force—and certainly since 1938 has supported all such appropriations. But there was a great difference of opinion among many Members of Congress and 100,000,000 people back home were non-interventionists and opposed to measures that would involve us in war or lead us to war. Many of us supported measures that were short of war, but opposed openly, and have never regretted it in any way, measures that would lead us into war and make war inevitable. These measures were openly opposed, as the RECORD will disclose.

I have never impugned the patriotism or the Americanism of any Member of this House or of the 20 percent of the people who desired to involve us in war before Pearl Harbor. That was their constitutional right, their right of free speech as free sovereign Americans, to express their own sentiments and to actually believe that it was our war from the beginning, and that we should enter the war before Pearl Harbor. But 100,000,000 Americans thought otherwise, and the great majority of this House—many Members of this House on both sides, I will say, in order not to raise a controversial issue at this time. I am just trying to point out the difference between supporting all war measures since war was declared, and appropriations for our armed forces before the war, and opposing with every possible influence, power, and voice and vote all measures that were steps toward war, that made war inevitable, which is an entirely different thing from supporting appropriations for defense and measures for victory after war was declared.

I am glad to take these very few minutes, Mr. Speaker, to state without fear of contradiction that the minority party, the Republican Party, has given 100 percent loyal support to the President and the administration, and the Commander in Chief, in all legislation since the declaration of war, toward helping to win the war as quickly as possible.

The SPEAKER. The time of the gentleman from New York has expired.

Mr. SABATH. Does the gentleman wish any additional time?

Mr. FISH. No; I have no requests for more time.

Mr. SABATH. Mr. Speaker, it is not my desire to answer the gentleman from New York. The record speaks for itself.

Mr. SPEAKER. I move the previous question.

The previous question was ordered.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

HOSPITALS IN ENGLAND

The SPEAKER. Under previous order of the House, the gentleman from Nebraska [Mr. MILLER] is recognized for 15 minutes.

Mr. MILLER of Nebraska. Mr. Speaker, I have asked for these few minutes this afternoon to give you a short résumé of some work in the hospitals which I visited in England 2 months ago.

This was my third trip to England, but the first time during wartime. I went immediately to the Military Medical Personnel in London, and they kindly supplied me with a car and driver. I spent several days looking at the hospitals in the midlands of England. I want to report to the House concerning the fine care that our soldiers are getting in these hospitals.

As of October 1, we had something over 100 hospitals in England. There were 86,350 patients in these hospitals. That sounds like a lot of casualties in hospitals, but, with American nurses, American doctors, and American equipment, our boys are getting most excellent medical care. I was told by the Surgeon General there that but 2 percent of the wounded actually died. Of the 2 percent, 1 percent were mortally wounded when they were first reached. This is an outstanding record. With the use of new drugs, new techniques, many lives are being saved.

I went up about a hundred and seventy miles north of London to see some of these hospitals. At one hospital for the care of the nervous, I was particularly impressed with the care being given to the soldier who was nervous. We all have a breaking point. Whether you are a Member of Congress, a banker, a lawyer, or a businessman, there is a place in your life when you can be stretched too far, and you may have a nervous break-down. The hospital was located in a beautiful setting in the countryside. In this hospital of temporary construction were some 1,000 soldiers. They brought in about 30 a day and they were sending out about 30 each day. They kept them there for about three or four weeks. Those boys were jittery. Some of them had been on

K-rations too long, too much flak in a bomber, too much time in the front trenches. They were nervous and upset. They put these boys to bed; they really unhitched and unharnessed them. They gave them a sedative. For 48 hours they are completely relaxed. When they awaken they are in a warm bed. They have good food. There is a sympathetic nurse on hand. They have some music and papers and things around them that are conducive to returning them to health. The doctor in charge of the hospital told me that 95 percent of those boys were being rehabilitated and sent back to service. Perhaps a tail-bomber does not go back being a bomber in an airplane, but they are sent back to some type of duty. During the last World War we did not take very good care of some of the soldiers who were stretched too far. We called it shell shock. We put a label on them. Many of them were sent back to hospitals and institutions for the insane. When the depression was on there were long waiting lines at veterans' hospitals. Some who could have been rehabilitated went insane because of lack of understanding and treatment of the case. But in this war you do not see that. They call this illness battle exhaustion. It does not appear on their records. The boy does not come home with the feeling "I have been shell shocked. There is something wrong with me," like we did in the last World War. He goes back to duty. He puts on the uniform. He is a part of the Army again.

It is going to be a big saving to that soldier in the years to come. It is going to be a big saving to the taxpayers of America, because we will not have to fill our institutions with men who have cracked up.

I went to a fracture hospital where some 1,500 soldiers were being treated, mostly paratroopers, men with fractured legs and arms. They had very few bed patients. I saw the care they were getting. They have gymnasiums that are busy from morning until night. These gymnasiums are fully equipped. The treatment being given will eliminate the stiff joint which would otherwise occur. There will be little if any disability resulting from the fractures.

During the last World War I served in a rehabilitation hospital. There were fewer fractures then because we had no paratroopers. I am sure from 20 to 30 percent of the fracture cases had some disability afterwards. Some still carry them. Now these fracture cases are getting expert care and we are not going to have the stiff joints we had before.

I saw a group of soldiers going through a tough obstacle course, through trenches, under barbed-wire entanglements, up over walls and, hand over hand, across water hazards. Three months before they had fractured arms or fractured legs. The marvelous treatment will assure them little or no disability—the men go back to some type of duty.

I went over to an amputation hospital. You know they do not do very much work on amputations; it is just the

rough amputation. I have particular reasons for being interested. They send most of them back here to this country for further amputation. Go out to Walter Reed Hospital or to the Naval Hospital, and some of you ought to go if you can lend some encouragement to those soldiers with amputations. The last time I was out I saw some 30 boys—amputation cases. A lad who gets an amputation, whether it is a finger, an arm, or a leg, has to make some adjustments within himself. He has to learn to make friends with his disability. If it is possible to cheer those boys up it ought to be done. When they realize that they can get around with artificial limbs it does a great deal to them, physically and mentally.

On the ship coming home were some 800 hospital cases. Some of the boys were almost mortally wounded, seriously wounded, and it will take a great deal of rehabilitation to reestablish them. That is being done at the different hospitals throughout the country. Many of these cases need plastic surgery—or a long period of hospitalization.

I was at an evacuation hospital. Something that happened there touched me very deeply as I am sure it will you. It was in one of those hospitals just across from France. They bring some of the badly wounded boys in by airplane. Thirty or forty of them were there in this little tent hospital on stretchers. They were waiting to be moved back to a larger hospital. A little redheaded American nurse was working at top speed trying to relieve pain, changing dressings and carrying out the doctors' orders. As I walked through with the captain of the nurses we came to this girl and the captain said: "Nurse, you must be getting tired; I will try to get some relief for you soon." What do you think that little American nurse said? She said: "No, captain; I really am not tired. I have only worked 20 hours; I can stand another 6 or 8 hours." That is courage and the spirit the nurses are showing over there. Then I thought of some of the strikes we are having in this country by people who wanted to get double time or time and a half for working a little overtime. There is a difference.

Mrs. ROGERS of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. MILLER of Nebraska. I yield.

Mrs. ROGERS of Massachusetts. The gentleman may have noticed in the paper recently that one Massachusetts nurse was killed over there. The night before her death she had written a very beautiful description of the courage of the wounded men.

Mr. MILLER of Nebraska. Yes. When I saw these boys in this temporary evacuation hospital I saw evidence of the highest degree of courage. These wounded men had real courage. The nursing and medical care is the best.

There are other things I should like to report on at a later date.

Mr. PHILLIPS. Mr. Speaker, will the gentleman yield briefly?

Mr. MILLER of Nebraska. I yield.

Mr. PHILLIPS. I am very glad the gentleman from Nebraska is bringing these things to the attention of the

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DIGEST OF PROCEEDINGS OF CONGRESS OF INTEREST TO THE DEPARTMENT OF AGRICULTURE
(Issued December 1, 1944, for actions of Thursday, November 30, 1944)

(For staff of the Department only)

CONTENTS

A.A.A.....	4	Inflation.....	10	Road authorizations.....	5,9
Appropriations.....	4	Land-grants.....	7	Small business.....	18
Bureaucracy.....	14	Land speculation.....	10	Social security.....	16
Claims.....	4	Lands, farm.....	15	State fairs.....	13
Electrification.....	17	Nomination.....	6	Taxation.....	16
Farm security.....	15	Personnel.....	3,19	Tobacco prices.....	14
Flood control.....	8	Post-war planning.....	12	Transportation.....	7
Foreign trade.....	12	Price control.....	11,14	Veterans.....	3,18
Forestry.....	2	Reclamation.....	8	War powers.....	1

HOUSE

1. WAR POWERS. Passed as reported H. R. 4933, to extend the Second War Powers Act (pp. 8757-70). (For provisions see Digest 165.)
Rejected amendments by Rep. Gwynne, Iowa, to strike out the Committee amendment and insert a prohibition on the imposition of penalties, fines, or sanctions unless specified by statute and expressly delegated to such agency by lawful authority, by a 49-57 vote (pp. 8766-70); and by Rep. Folger, N. C., to provide that the authority given to the district courts to set aside orders, etc., shall not apply to order of suspension as to priority, grant or allocation resulting from a determined general requirement for the effective prosecution of the war, by a 7-95 vote (pp. 8769-70).
2. FORESTRY. Rep. Brown, Ohio, announced that he would request the Rules Committee to grant a rule for the consideration of H. R. 2241, to abolish the Jackson Hole National Monument and to restore the area included therein to the Teton National Forest (p. 8755).
3. VETERANS; PERSONNEL. Concurred in the Senate amendments to H. R. 5386, to change the period from 40 to 90 days in which a veteran may make application for the job which he held at the time of his induction; and to provide that if hospitalized for not more than one year following his discharge, the 90-day time shall not begin until the termination of hospitalization (pp. 8770-1). This bill will now be sent to the President.
4. APPROPRIATIONS. Received from the President a proposal to increase by \$13,000,000 the limitation on expenditures under the 1944 program of soil-building practices and soil and water-conservation practices established in the fourth proviso clause of the 1944 "Conservation and use of agricultural land resources" appropriation. This increase in limitation does not require the appropriation of any additional funds, and was proposed because participation of farmers in the program, particularly in the Southern Region, was greater than had been anticipated. Unless the limitation is increased, conservation practice payments will have to be reduced below the announced rates. (H. Doc. 793.) To Appropriations Committee. (p. 8772.)

Received from the President supplemental appropriation estimates for payment of judgments rendered by the U. S. district courts (H. Doc. 790), judgments rendered by the Court of Claims (H. Doc. 797), claims allowed by GAO (H. Doc. 799), and payments of claims for damages to privately owned property (H. Doc. 800). To Appropriations Committee. (p. 8772.)

SENATE

5. ROAD-AUTHORIZATION BILL. Sens. McKellar, Hayden, Bailey, Reed, and Langer were appointed conferees (p. 8739). House conferees have not yet been appointed.
6. NOMINATION. Confirmed, 68-1, the nomination of Edward R. Stettinius to be Secretary of State (pp. 8716-38, 8754). During discussion of the nomination, Sens. Langer, N. Dak., and Aiken, Vt., discussed the St. Lawrence Seaway and Missouri Basin with respect to transportation, electrification, and irrigation, and Sen. Langer inserted excerpts from letters and speeches indicating Morgan and Company's opposition to these projects (pp. 8722-36).
7. TRANSPORTATION; LAND-GRANTS... Agreed to have printed Sen. Reed's (Kans.) individual views on H. R. 4184, to repeal land-grant rates for military and naval traffic (H. Rept. 1208, pt. 2) (p. 8716).
8. FLOOD CONTROL. Continued debate on H. R. 4485, the flood-control bill (pp. 8740-53).
Debated the Murray (Mont.) amendment to transfer the civilian construction functions of the Army engineers, in the West, to the Bureau of Reclamation (pp. 8740-53).

ITEMS IN APPENDIX

9. ROAD AUTHORIZATIONS. Speech in the House by Rep. Abernethy, Miss., in support of his amendment (agreed to Nov. 29) to increase the authorization for national park roads and trails from \$15,000,000 to \$30,000,000 (pp. A4907-8).
10. INFLATION. Rep. Patman, Tex., commended the inflation-control program and inserted the President's letter on this subject and a Washington Post article on OWI's statement "that runaway boom on farm values is feared" (pp. A4913-4).
11. PRICE CONTROL. Sen. Capper, Kans., inserted Price Administrator Bowles' National Grange speech on OPA's efforts to aid "Farmers in the War" (pp. A4919-22).
12. FOREIGN TRADE. Extension of remarks of Rep. Robertson, Va., including a National Planning Association's report, urging international cooperation in the discussion and planning for post-war foreign trade (pp. A4922-3).
13. STATE FAIRS. Extension of remarks of Rep. Gillie, Ind., urging the "return of State fair grounds by the Federal Government," and stating that "the continued welfare of our purebred livestock industry is greatly dependent on the ... resumption of our State fairs" (pp. A4923-4).

BILLS INTRODUCED

14. TOBACCO: BUREAUCRACY. By Rep. Jennings, Tenn., H. R. 5562, "relating to burley tobacco of the 1944 and 1945 crop." Rep. Jennings stated that the purpose of the bill is "to prevent the bureaucrats from taking away from the [tobacco] farmers what they have earned" (pp. A4908). To Agriculture Committee. (p. 8773.)

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

[The matter referred to appears in the Appendix.]

Mr. SLAUGHTER. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and to include therein an editorial appearing in the New York Sun under date of November 29.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

[The matter referred to appears in the Appendix.]

EXTENSION OF THE SECOND WAR POWERS ACT

The SPEAKER. The Chair is ready to recognize some Member to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 4993) to extend the Second War Powers Act.

The gentleman from Alabama.

Mr. HOBBS. Mr. Speaker, our distinguished chairman of the committee is supposed to be handling that. I have no authority to speak for the committee.

The SPEAKER. The Chair recognized the gentleman from Alabama to make the motion.

Mr. HOBBS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 4993) to amend Public, No. 507, Seventy-seventh Congress, second session, an act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 4993) to extend the Second War Powers Act, with Mr. CLARK in the chair.

The Clerk read the title of the bill.

By unanimous consent, the Clerk's reading of the bill was dispensed with.

The CHAIRMAN. The gentleman from Alabama is recognized.

Mr. HOBBS. I yield to the gentleman from New York.

Mr. HANCOCK. Mr. Chairman, I hope there will not be much controversy about this bill. It is "must" legislation.

About 2 years ago the Senate passed the second war powers bill. It came to the House where we thoroughly considered it both in the Judiciary Committee and on the floor. About 50 amendments were adopted, as I remember, all designed to protect the rights and interests of private individuals without unduly restricting the necessary war powers of the Executive. All were agreed to by the Senate. Despite the fact that the Attorney General has held that the President has a bottomless reservoir of war powers we are asked to extend the life of

the act for 1 year, and we are practically unanimous in believing it essential that we do so.

Your committee spent about 4 full days considering this bill. We consulted the Under Secretary of War, the Chief of the W. P. B., counsel for O. P. A., counsel for the Department of the Navy, and with various other officials concerned with these war powers.

All of us are cognizant of instances of abuse of power, of mistakes, of discrimination and favoritism in the administration of the powers of allocation, priorities, and rationing under title 3 of the act, but these are mistakes of administration and we haven't found it practicable to correct them by law without interfering with the war effort, which is the all-important consideration and requires the pooling of all our resources, human and material. When the magnitude of the job is considered, the number of such mistakes is amazingly small.

We considered various proposals to protect individuals against such abuses. Most of the members of the Judiciary Committee regard it as dangerous and unwise to do anything more than to adopt one amendment to the present War Powers Act which will make it definite and certain that aggrieved persons may have the right of injunctive relief when suspension orders are issued for alleged violation of administrative orders. It is generally realized suspension orders often have the effect of absolutely destroying a business. In such extreme cases we feel that the individual should have the right to go into court and obtain relief through injunction; otherwise the bill extends the war powers as they now exist under the Second War Powers Act.

Of course, we all dislike the restraints and restrictions that the exercise of these war powers impose upon us but it is a very little sacrifice to ask of us and it is a very small contribution that we as individuals and private citizens are making toward winning the war. So long as the war lasts the American people will submit cheerfully and gladly.

As far as I am concerned, I am willing to support the bill just as it comes from the committee.

Mr. COCHRAN. Will the gentleman yield?

Mr. HANCOCK. I yield to the gentleman from Missouri.

Mr. COCHRAN. Does the gentleman indicate that this bill is going to be passed without the amendment being thoroughly discussed? As far as the original bill is concerned, we all agree it is a "must" bill, but there is no "must" about the amendment.

Mr. HANCOCK. Does the gentleman mean the amendment that the committee proposes?

Mr. COCHRAN. The amendment that starts on page 2, line 8, which gives the right to take these cases into the district court. That was not in the original act?

Mr. HANCOCK. As I stated, that is the only amendment which the committee proposes, and it is not opposed by the W. P. B., the War Department, the Navy Department, or any other agency

of government. They all agree that is a reasonable protection to give the people of the United States.

Mr. COCHRAN. But, on the other hand, you are going to give all these business houses, individuals, and corporations the right to go into the Federal court whenever an order is issued, and during the time the case is pending they will be able to secure the material which they desire. It seems to me that you are treading on very dangerous ground when General Eisenhower and General MacArthur are calling for more ammunition. It might be that strategic materials needed for the manufacture of ammunition will be involved in the cases that are taken to the Federal court. I think it is a dangerous thing to tie the hands of a government board dealing with this material by letting these corporations and business houses go into court and upset the apple cart. As far as I am concerned, I am opposed to that amendment.

Mr. HANCOCK. The amendment applies only to suspension orders, and that is an extreme penalty. When a man is suspended from doing business it might mean his absolute ruin. The gentleman proposes that an aggrieved person may have no access to the courts whatever, no matter how flagrantly a government agent has abused or exceeded his authority.

Mr. COCHRAN. Assume that the O. P. A. suspends the license of a gasoline dealer for dealing in the black market, would he have a right to go into court?

Mr. HANCOCK. No; this does not apply to rationing orders or allocations or priorities—merely to suspension orders.

Mr. COCHRAN. Does the gentleman think it is absolutely necessary to tack this amendment on here?

Mr. HANCOCK. It is desirable but probably not necessary. I think the right already exists. At least two injunction suits have been brought against the W. P. B. The Government did not raise the question of jurisdiction and the court has not passed on it.

Mr. COCHRAN. If we got along without it during the period that this original law has been in force, why can we not get along without it now?

Mr. HANCOCK. We feel that a man in business is entitled at least to have a court review of an order which might ruin him.

Mr. COCHRAN. That is all right, but the prosecution of this war is more important than trying to save a business.

Mr. HANCOCK. The gentleman apparently thinks that this applies to all rationing orders instead of suspensions. We do not have that question before us. There have been something like 24,000,000 gasoline-rationing cards issued, to mention only 1 article. If any substantial part of them got into court, of course, it would seriously interfere with the work of the O. P. A. and swamp the courts.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. HANCOCK. I yield to the gentleman from Pennsylvania.

Mr. WALTER. Did the heads of the agencies affected testify that this amendment, if adopted, would not in any wise interfere with their work?

Mr. HANCOCK. They so stated, and they intimated that individuals have the right under the law as it now exists to seek injunctions. The War Department and W. P. B. have never raised that question. There have been injunction actions brought—there were two, if I remember the testimony. The question of the right to bring these injunction suits, however, has not been judicially determined. The committee amendment will make it certain that the private citizen has that right.

Mr. COLE of New York. Mr. Chairman, will the gentleman yield?

Mr. HANCOCK. I yield to the gentleman from New York.

Mr. COLE of New York. The gentleman has characterized this bill as being "must" legislation. Of course, as the gentleman knows, that expression has a very definite meaning. I am curious to make certain the gentleman's opinion as to whether word has been sent down from the White House to the Congress that this bill is a "must or else" or is it "must" legislation by reason of circumstances that prevail throughout the world?

Mr. HANCOCK. Oh, I think it is absolutely essential in a war as vast as this. We have to mobilize not only our human but our material resources, and without the exercise of these extraordinary powers it is impossible to control the materials and supplies needed by the Army and Navy.

Mr. COLE of New York. This is not a bill to which the attention of Congress has been directed by the White House as being "must" legislation?

Mr. HANCOCK. No; we have not had any direct word from the White House. The Under Secretary of War, the head of W. P. B., the chief counsel for the Navy Department, the chief counsel for the O. P. A., and other high ranking officials appeared before us and said it was essential that this bill be passed, and be passed before the end of this session.

Mr. SUMNERS of Texas. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, I hope to be able to be of some assistance in giving you a clear notion of what the situation is, the reason for this legislation, and the reason for the amendment which has come under consideration. As the members of the Committee know, the Committee on the Judiciary had the responsibility for the original War Powers Act.

It is recognized by the Committee and I think by the Congress and by the country that this War Powers Act is not ordinary legislation. When a democracy goes to war it is necessary to give greater speed and greater strength to its government than democratic institutions functioning normally can provide. I like to make that statement because I think it is rather important that the country understand the position of the legislative branch with regard to these items of war legislation. They come under considerable criticism.

The whole history of Anglo-Saxon systems of government shows that one of the reasons why we have been able effectively to conduct war against even dictators and have been able to escape long periods of dictatorship, is that we seem instinctively to sense a situation that requires a quicker pick-up and a stronger power than our institutions functioning normally can provide. It is a fascinating thing that in such a situation we meet that situation by conferring extraordinary powers in the agencies that are charged with the responsibility of fighting the war. We have demonstrated a genius thus far to do that thing and at the same time to retain the power to control the exercise of that extraordinary power, if necessary, and the power to recapture and redistribute it when the emergency is over. It is a fascinating thing when you come to examine it.

Responding to that necessity, this Committee on the Judiciary brought out the war powers bill. In practice a good many unnecessary and arbitrary exercises of power have developed. That is a bad thing. It should be avoided. I think everybody recognizes that. It tends to weaken the morale of the country to have an abusive exercise of a necessary war power.

In this section 3 the committee undertook to provide remedies as far as it could do so without weakening the war power. I want that distinctly understood. We have no partisanship in our committee. We recognize we are fighting a war. We were very anxious to see that whatever we did to give relief to individuals against the abusive exercise of this extraordinary power did not weaken the war power. We had representatives of the agencies of government whose powers arise under the War Powers Act come before the committee and there was general agreement that that thing was accomplished by the provisions of this bill. There is the right of the individual citizens under the circumstances provided for in this amendment to resort to a court of equity against the abusive exercise of even a necessary power. There is one point which one or two of the agencies of the Government have become concerned about since the amendment was agreed to. That is with regard to allocations already made. The concern is that if a change in condition should develop, if, for example, General Eisenhower or somebody else should indicate that they need a larger percentage of essential material than had theretofore been thought necessary these representatives were somewhat concerned that this injunctive power, this right to resort to a court of equity on the part of an individual, might in such a situation operate against the power of the Government to change the allocation and withdraw from allocation for civilian use a part of the necessary material already allocated but later found to be required for war purposes. We did not agree that that apprehension was well founded. I am authorized by what I know to have been the purpose of the committee to say that there was and is no intention on the part of the

Judiciary Committee that no provision of section 3, or any other section, would make it impossible to reallocate that material without injunctive interference in order that the Army might get quickly all that the Army required and that a private citizen will not be permitted to interpose a private interest against the public necessity.

Mr. LUTHER A. JOHNSON. Mr. Chairman, will the gentleman yield?

Mr. SUMNERS of Texas. I yield to my friend, the gentleman from Texas.

Mr. LUTHER A. JOHNSON. I wish to say that my personal opinion is the committee ought to be commended rather than condemned for this provision. Of course, I am not familiar enough with this provision to know what the effect might be, but I am sure that the committee has given consideration to see that it does not destroy the war power, but at the same time does give the citizen his day in court, which I think he should have. I am especially pleased that that part of the amendment which fixes venue in suits of this kind in the residence of the petitioner rather than in the Capital or in some remote point which would make it impossible for him to come to court and thus have his day in court.

Mr. SUMNERS of Texas. May I say to my colleague from Texas that the committee had in mind what I believe to be in the mind of my colleague, that is, that we would do nothing to interfere with the carrying on of the war and that wherever there is a conflict between the public interest and what would ordinarily be the right of a private citizen, the right of the private citizen would have to yield to the public necessity. As the gentleman from New York [Mr. HANCOCK], the ranking Republican on the Committee on the Judiciary has said, and I repeat, "In our committee there is the very minimum of partisanship, in fact I believe it is practically nonexistent."

The CHAIRMAN. The time of the gentleman has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield myself 5 more minutes.

Mr. COCHRAN. Mr. Chairman, I have listened to the gentleman from Texas, and he is somewhat in conflict with members of his committee, because a moment ago the gentleman from New York [Mr. HANCOCK], as I understood him, said that the representatives of the various agencies appeared before your committee and were in accord with the amendment. The gentleman from Texas, chairman of the committee, says that some of those officials who appeared before his committee were rather doubtful about the phrase, and he referred to the example to which the gentleman referred, that in the event priorities in allocation had been made and there developed a situation that required them to revoke it, due to the fact that the material was needed for war purposes, they doubted whether they would have the power, without the individual or the corporation going into the court and seeking an injunction. That was my fear, and I asked the gentleman to point out in that language any protection that the agencies would have if it did develop that the material was needed for war purposes.

Mr. SUMNERS of Texas. My distinguished friend misunderstood me, or I was not clear in what I was trying to state. I do not agree with the apprehension that seems to have developed, and I know to whom the gentleman refers, since the amendment was adopted. I do not agree. But my statement, made as chairman of the committee on the floor of the House, to be a part of the RECORD, was made for the purpose of removing any apprehension that might exist in any quarter; that anybody could interfere with the reallocation of these necessary commodities required for the conduct of the war. Now, does the gentleman understand my purpose in making the statement?

Mr. COCHRAN. Yes; I understand it, but, on the other hand, we know that Government agencies and individuals do not pay any attention to the intent of Congress. They pay attention to the language that is laid down in the act.

Mr. SUMNERS of Texas. Well, we are going to "learn them" how to pay a little attention to the intent of Congress.

Mr. KEFAUVER. Will the gentleman yield to me?

Mr. SUMNERS of Texas. I yield to the gentleman.

Mr. KEFAUVER. As I understand the statement of the chairman of the committee as giving the legislative intent of the Committee on the Judiciary, in an instance like this, for example: Suppose 30,000,000 tons of steel had been allocated to civilian production, and then by virtue of the demand of war agencies it was found that only 15,000,000 tons would be available for civilian production, but it was necessary to make an over-all cut in the amount of the allocation to civilian industries, if that were done an order making the reallocation or the cut in the allocation or the quasi-suspension order, would not be subject to review under the injunctive processes set up in the amendment herein provided.

Mr. SUMNERS of Texas. I thank the gentleman.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

Mr. SUMNERS of Texas. I will take 5 additional minutes, Mr. Chairman.

I appreciate the observation of the gentleman from Tennessee. That is what I was trying to say and that is what I thought I had said. We cannot legislate, committees cannot report out a bill that will take care of every apprehension of a nervous person who happens to be connected with one of these departments of government. I hope the statement of legislative purpose will allay any unnecessary and unwarranted apprehension.

Mr. JENKINS. Mr. Chairman, will the gentleman yield?

Mr. SUMNERS of Texas. I yield.

Mr. JENKINS. I should like to ask the gentleman for my own information. As I understand we are now amending the Second War Powers Act.

Mr. SUMNERS of Texas. That is right; extending it and amending it.

Mr. JENKINS. Would the gentleman have time to state briefly what is con-

tained in the First War Powers Act and what in the second one, without going into detail?

Mr. SUMNERS of Texas. May I make this statement, and it is broad and comprehensive and would require some modification, to be exact or approximately so, the War Powers Act, insofar as the Committee on the Judiciary is concerned, and the legislative jurisdiction which it assumed in reporting out the bills with regard to various items with which they deal, was to make the necessities of the Government in the conduct of this war paramount in governmental concern.

At the same time, of course, as a matter of justice to the civilian population, and as a matter of good sense in holding to the support of the war the public attitude of the people, we have tried as far as we could to avoid hardships to the people growing out of the very fact that many people have to exercise these powers and there are a good many people among them who, possessed of such powers become contemptuous of individual rights and of public opinion.

Mr. JENKINS. The reason I asked this question was because I noticed in the report on the bill that section 303 which as I read it applies to the activities of the Navy—

Mr. SUMNERS of Texas. The gentleman means section 3.

Mr. JENKINS. Yes; and the Army. I had in mind that when we adopted the First War Powers Act it was held within one field of activity; that when we adopted the Second War Powers Act we dealt with another field of activity. Have we had more than two War Powers Acts? Is there a third?

Mr. SUMNERS of Texas. There are two War Powers Acts.

Mr. JENKINS. Only two?

Mr. SUMNERS of Texas. Yes.

Mr. JENKINS. If someone were to ask me what was encompassed in War Powers Act No. 1 and War Powers Act No. 2 I could not offhand tell them. Both are very general, of course.

Mr. SUMNERS of Texas. They outline just the general purpose. The gentleman will excuse me for not going into the whole scope of the War Powers Act.

This bill proposes to extend the life of the Second War Powers Act. Section 3 is the only important amendment; and section 3 has been explained. While it is not agreeable to everybody, as is evident, it is the best the Judiciary Committee could do. We thrashed it out thoroughly in the committee. We had a considerable difference of opinion in regard to one particular matter, but that was adjusted in the committee. Insofar as I know, the committee is unanimous in its attitude in presenting this bill to the House with the recommendation that it do pass.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman yields back 1 minute.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from Missouri [Mr. COCHRAN].

Mr. COCHRAN. Mr. Chairman, I believe I understand exactly what the com-

mittee desires to do. We all know the views of the gentleman from Texas [Mr. SUMNERS] and the views of the gentleman from Pennsylvania [Mr. WALTER] who entered the colloquy a few moments ago. To me this amendment is an effort to apply the principles of the so-called Logan-Walter bill to the War Powers Act to provide for the judicial review of an administrative decision. I believe that is exactly what this amendment will do. The House has previously refused to approve the principle laid down in the original Logan-Walter bill.

As far as I am concerned, and I do not care whether I am alone or not, there is no power that I will not delegate to the Chief Executive and to the Army and Navy for the purpose of bringing this war to an early and successful conclusion. I do not want to tie their hands in any manner, shape, or form. I want them to secure everything they need for the war fronts no matter what inconvenience or hardships are suffered on the home front. The war effort must come first.

Once priorities are issued and allocations made, as the gentleman from Texas said, there might develop a situation where that allocated material would be needed for war purposes. The truth of the matter is we are faced with a very critical condition at the moment. It is no secret. Speed up production is the cry. Two dozen or more men have been withdrawn from the fox holes and are back here now to visit manufacturing plants and plead for more bullets, shells, tanks, trucks, and planes.

If you show me in the amendment where the Government agency can revoke the priority and revoke the allocation and at the same time take away from the individual, partnership, or corporation their right to go into the Federal court, then I will stop talking. I yield to anyone to show me in the wording of the amendment where in a case of that kind you take the right away from the individual, partnership, or corporation to go into court if the material is needed for war purposes. Until the amendment reads that way I do not think it should be adopted. No one seems to show me the language.

No one wants to take away the right of a citizen under the Constitution of the United States unless absolutely necessary under the powers granted in the Constitution to the President to fight a war. It is dangerous procedure to fool with material that might be needed at a future date to make arms and ammunition to use in order to defeat the enemy.

What good are the guns going to be if we do not have the shells to fire in them? What good are the tanks going to be if we do not have the gasoline to run them? The same may be said as to airplanes. They need the gasoline. They need the bombs. You and I know that appeals are being made to the country today for more ammunition, more tanks, more planes, and more ships, and if we are going to get more planes, more tanks, more ships, and more ammunition we might need this material that has already been allocated through these

priorities, and if we do business must give it back.

Mr. Chairman, I say that an amendment of this kind has no place in this bill.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOBBS. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALTER].

Mr. WALTER. Mr. Chairman, I am afraid that my friend from Missouri has not read the amendment with the care that he usually exercises before he takes a position, because this amendment does not do the things that he feels it would do. If I had had my way I would have written into this law a provision that would have protected our citizens from the capricious and arbitrary action of the men administering the law.

I do not have to apologize for my position with respect to reviewing decisions of administrative agencies. The House by a very large majority some months ago passed a bill that provided for judicial review of administrative decisions and the fact that such a measure is not being considered by this Congress indicates pretty clearly the attitude of myself and others on that type of legislation with respect to the possibility that such legislation might interfere with the war effort. The mere fact that we have not introduced such legislation in this Congress indicates our desire to avoid anything at all that might be construed as an interference with the war effort. But this amendment can in no wise impede or hamper the activity of any of the agencies administering these unusual powers. After all, we are dealing with human beings, and we are going to have these problems upon the cessation of hostilities.

Somebody is going to be in a position where he can say that company A may have some strategic materials as to companies B, C, D, and other companies, and in that I can see the possibility of all sorts of fraud and corruption, if you please. So it seems to me that a citizen ought to be in a position, where a decision is purely arbitrary and capricious, to go into court and enjoin that administrator from carrying out the things that are improper.

Bear this in mind, that the action is in equity, and in order to make out a case it is necessary to demonstrate to the satisfaction of the court that the action is capricious and arbitrary. I cannot imagine a judge who would issue a temporary restraining order, and I cannot imagine a judge issuing any restraining order until after a full and complete hearing at which the administrative agency could make the representations that the gentleman from Missouri [Mr. COCHRAN] thinks they would make in case any application is made. No judge under those circumstances would grant a restraining order.

This amendment is absolutely necessary if we are to protect our people from those things that inevitably happen when some people get too much power, power that cannot be reviewed. I urge this amendment.

Mr. SPRINGER. Mr. Chairman, I yield 10 minutes to the gentleman from Iowa [Mr. GWYNNE].

Mr. GWYNNE. Mr. Chairman, I agree with the gentleman from Missouri in being opposed to the committee amendment, but for an entirely different reason. In my judgment the amendment does nothing. It simply restates existing law, except that it makes a slight change in the form of service.

If you will follow me just a minute, I would like to call your attention to what has happened under this Second War Powers Act. It illustrates how bureaucracy has us by the throat, and how this Congress is refusing to do anything to protect the people from it. If you have before you the original Second War Powers Act, you will see it covers some 16 titles. If you will turn to title 3, on page 3, "Priorities powers," you will find this sentence:

Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material—

And so forth—

the President may allocate such material or facilities in such manner, upon such conditions, and to such an extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

That sentence is the sentence that gives the President authority to allocate materials, to set up priorities; and to establish rationing. Mr. Chairman, that sentence gives to the President and to his agencies an authority we all admit he should have. For instance, the President under that sentence can do this: He can say to Company A, "You can have a thousand tons of steel to make tanks." He can say to Company B, "You can have 500 tons of steel to make some civilian goods essential or useful in the war effort." He can say to Company C, "You can have nothing, because the product you make is not essential."

We anticipated, when we passed that law and wrote that sentence, that there would be violations of the orders of the President; that steel might be given to some corporation with which to make war material, and that they might divert it to improper uses. So we provided penalties. We provided that the W. P. B. might go into court and get an injunction against the person who violated these orders, or they might go into court and have the man prosecuted criminally and put in the penitentiary. Those are the methods of enforcement provided in the law.

But you know that a bureau never likes to take a citizen into court. They are afraid they will run up against some judge who is old-fashioned enough to think that the Constitution is equally sacred with the rules and regulations of the bureaus. So here is what the W. P. B. did. They invented a penalty of their own. They invented what they are pleased to call a suspension or a sanction. For example, if they give 1,000 tons of steel to someone and they think he misuses it, they will put an order into effect that he is thereafter during the lifetime of the act, and in some cases

even beyond the lifetime of the act, prohibited from getting any of that critical material.

A case went to the Supreme Court, not from the W. P. B. but from the rationing agency, and the Court held that the power to allocate did give the allocating authority the power to take away and reallocate and prohibit the offending person from ever thereafter during the lifetime of the law getting any goods to be allocated. That is the case of Stuart against Bowles. I submit you should read it.

This amendment which is advertised here as being something great for the citizen and as being a defense against the suspensions and these sanctions says just this. Let us analyze it a minute. All it says is that the district court shall have jurisdiction to enjoin these suspension orders. They have that now. The Government does not deny it, and in the Stuart case they admitted it. The only change that I can see that this amendment makes in existing law is a minor change as to the manner of service.

Here is what your remedy is if you go in for an injunction. In the first place, you will get no relief. You cannot get into the courts until you have exhausted all your administrative remedies. In the W. P. B. they have not just one of these administrative courts, they have a series of them. You must go from one to the other before you can even be heard in court. The lower court has jurisdiction to hear your injunction suit. If you want to know how independent the courts are in deciding cases for themselves, read the recent decision of the Supreme Court in 310 United States 570. In other words, they will enjoin the enforcement of a law only in rare cases where there is a clear showing that the agency acted capriciously or arbitrarily and without evidence. The remedy the citizen has today is nothing and the remedy he has under this amendment is nothing.

This is what we should do. Here is the kind of amendment we should have. We gave the W. P. B. their rights. We said, "We are laying down a course of conduct for the citizen. If he violates it you can take him into court." Let them do it. Do not let them set up a kangaroo court of their own and then make the citizen go into court in a futile effort to try to enjoin them. This is the kind of an amendment we need. We should add this language to this bill instead of the suggested committee amendment:

Nothing in this act shall be construed as giving the President or any Federal agency, official or employee the right to inflict or impose penalties, sanctions, or suspension orders of any kind, remedial or otherwise, not both specified by statute and expressly delegated to such agency or person by lawful authority.

What we do by this amendment, if it should be adopted, is simply to make the W. P. B. enforce the rights we give them and enforce the obligations we put on the citizen, in a proper court, instead of inventing their own penalties and their own judicial process, and then expecting the

citizen by some remedy that does not exist to go in and protect himself.

Mr. JENKINS. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE. I am not sure that I am making myself clear. I should like to yield on that point.

Mr. JENKINS. Is the gentleman going to offer that kind of an amendment?

Mr. GWYNNE. I trust an amendment like that will be offered.

Mr. JENKINS. I hope it will, because I should like to support it.

Mr. GWYNNE. They tell us, "Oh, that would hamstring the W. P. B." Why will it? We are losing our rights every day and we are losing them under this claim of emergency. Mr. Chairman, if we are here 50 years, you will hear that claim as we heard it in connection with the depression and as we hear it now on account of the war. Then it will be the rehabilitation of Europe; then it will be another depression and another period of unemployment. After all we have come to a pretty pass in this country when we admit that the courts and the judicial machinery are not adequate to enforce the rights that we, ourselves, are giving to these bureaus.

Miss SUMNER of Illinois. Mr. Chairman, will the gentleman yield for a question?

Mr. GWYNNE. I yield.

Miss SUMNER of Illinois. The way this committee amendment is phrased, it speaks of the right to do it under any other law or authority and then it also uses the word "allocation." I should think in a case, for instance, where money was given to an automobile concern, let us say a million dollars, by the Defense Plant Corporation, that would be an allocation and somebody else could go and enjoin that because they wanted the money and did not consider it fair and thus hold up the war effort. For that reason, I wonder if this amendment is entirely innocuous.

Mr. GWYNNE. In my judgment, it is entirely innocuous. Nothing can be done under this amendment by way of any substantive right that you cannot now do under existing law. In other words, if you maintain that some department of the Government is, in violation of law, depriving you of your rights, you always have the right to go to court for an injunction. We all know that.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOBBS. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois [Mr. SABATH].

Mr. SABATH. Mr. Chairman, when I reported the rule yesterday making this bill in order, I stated that I would oppose one of the committee amendments. Later, however, after having carefully read both of the amendments I was satisfied that both amendments should be approved. I was misled, originally, in believing that the first amendment, which I think is known as the Walter amendment and on which the committee had agreed, was too restrictive. The Committee on the Judiciary, in its wisdom, changed and rewrote the originally proposed Walter amendment and I am further informed that the gentleman who

has the present duty of enforcing the law agreed to the changes in the amendment as proposed and agreed upon by the committee. Opportunity was afforded me to correct my remarks with respect to the two amendments before they went to the Government Printing Office yesterday and they properly explain the consideration given the amendments by the Committee on the Judiciary and that I favored their adoption by the House. I again reiterate my support of these two committee amendments and hope that they will receive the approval of the House and that no amendments will be considered which may destroy the intent and prudence displayed by this splendid committee in reporting out and agreeing to satisfactory amendments to the bill.

Mr. Chairman, I trust that we will not lose much time on this matter because the moment we are through with this bill, I shall call up a rule making in order the Smaller War Plants Corporation bill.

Mr. Chairman, I yield back the balance of my time.

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from Michigan [Mr. HOFFMAN].

(Mr. HOFFMAN asked and was granted permission to revise and extend his remarks.)

Mr. HOFFMAN. Mr. Chairman, the proposed amendment, as I understand it, merely gives the citizen the right, in a very few certain instances, to get into court and there ask judgment as to the validity of a Board order. To my mind there are many other occasions and instances on which a citizen should be given the right to go into court and ask a review of the orders. Perhaps an amendment to lessen the evil is not germane to this bill or to this amendment to the War Powers Act, but there has been altogether too much abuse in the exercise of the powers which have been given to the various boards. What I have in mind is this. The War Labor Board in settling disputes—and disputes have interfered with the war effort—has taken the authority, which it never had, to issue an order requiring the security-of-membership clause to be incorporated in contracts; to require the employer and employee to enter into a contract containing that provision.

In testifying before one of the House committees, the Chairman of the War Labor Board stated that his justification for those orders was the fact that inasmuch as under the National Labor Relations Act, the employer and employee might agree upon a maintenance of membership and check-off or closed shop, inasmuch as they might voluntarily agree to that, therefore the Board, having authority under the Smith-Connally Act to settle disputes, had the power to go ahead and order the employer and employee to do it; that is, to agree to those provisions. That is, order a closed shop, order a check-off, order a maintenance of membership, which is but a variation of the closed shop and check-off. When attention was called to the fact that under section 3, of the Smith-Connally Act, it was provided that in making such orders the Board should have in mind and keep in mind

the provisions of other acts, such as the wage-hour law the N. L. R. A., he simply said, "Well, as long as we are required to settle disputes we can do whatever is necessary to settle them."

In opening this debate someone said that the first objective before all the people at this time was the winning of the war. That is true, but it is only true in a limited sense. If when this war has been won, or more accurately speaking, if when the fighting is over, when all the battles have been won, we find ourselves without those things for which we have said the war was being fought, that is, the "four freedoms," then certainly we have fought the war in vain, and we have made no progress whatever.

I do not understand why it is that this Congress, I do not understand why it is that the Republican organization cannot see fit to demand that in this legislation which we pass from week to week, and month to month, we do not insert provisions which protect the rights of the citizens under our Constitution.

I cannot understand why it is that the War Labor Board should be permitted to go on and issue the orders which it has been issuing, an order for example down here in Philadelphia which caused that strike; orders which indirectly, in Chicago for 17 days tied up 35 percent of the war workers of certain plants and kept them from getting to their jobs because of a strike on the railroad system. I cannot understand why it is we sit here and refuse to take action which will prevent strikes, for example, in the city of Detroit. Not a single day goes by but that there are strikes which directly—not indirectly, but directly interfere with the production of war materials. It was only a short while ago that the President said these strikes were causing the death of American soldiers. Yet the Republican organization has not the inclination or courage, I do not know which it is, to put an end, as far as we can, to that situation. I do not understand why it is that you on the majority side, when the President, who you said had just received a mandate from the people—said that these strikes are causing the death of American soldiers, do not initiate legislation, do not start a movement to end it—to correct the situation. Is it because the President owes his reelection to the P. A. C., to the C. I. O., and this is the payoff?

I have been accused of being a seditionist, so-called; of being a Hitlerite, pro-Nazi, because I protested those things; and yet your President tells you that delay in passing legislation to settle this is causing the death of our soldiers.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. HOFFMAN. I yield.

Mr. WALTER. Perhaps when the gentleman makes the statement he just made he does not realize that in France it was a crime to strike at the time of the invasion.

Mr. HOFFMAN. What has that to do with this? We are not in France; we are not French; we are not under any French Government.

Mr. WALTER. They had a strike policy.

Mr. HOFFMAN. We are supposed to be under a constitutional government. But we have no effective program or policy to prevent interference with the war production. We are not running things the way they ran them in France; we are not following Frenchmen. There is a way out of this. I believe and always have believed that the American workers as a group, the overwhelming majority are just as honest and patriotic as you and I claim to be, as we think we are; but we know very well that for their own purposes there is a small number of their leaders who are profiting out of this war situation, building up funds of millions of dollars, drawing large salaries, whose expense accounts are almost unlimited; yet we do nothing about it. I tried 2½ years ago to get the House to pass legislation here that would have prevented the formation of the P. A. C. Now they intend to take over—they have already taken over—the Democratic Party. Sure. It controlled the last election in many States. The gentleman may smile, but they got rid of JOE STARNES, one of the best men this House ever had; they got rid of JOHN COSTELLO. They boast of defeating those men whose only offense was that on occasion—not always—on occasion they voted against the program of those who controlled the P. A. C. and the corrupt leaders in the C. I. O. Now you let them go on.

Republican members have said to me: "Oh, stick your neck out and you will get it." All right; I stuck it out and I got it; and I am glad of it. I know where my friends are and I know who are my enemies. I thank God for the enemies I have made while I have been in this Congress. I know, too, that those Republicans who told me to go back and shut up will themselves be subject to the same kind of abuse and be as falsely accused as I was. Many Republicans and Democrats have already been so accused. I just cannot understand why so many sit here and without protest let the P. A. C. and subversive groups skin you alive; why no effective action is taken. I hope that ultimately you will all realize what they are going to do to all of you and take effective action.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from Michigan [Mr. MICHENER].

Mr. MICHENER. Mr. Chairman, now let us return to the bill which is before the House. The Second War Powers Act was enacted some time ago. It has been effective in more ways than one. Many necessary things have been accomplished under the act, but at the same time many inequalities have followed the administration of the act. I can, from personal experience, name many cases where injustice and inequities have occurred by reason of the way the law was administered. We are today, however, confronted with a condition, not a theory. This law will soon expire. It must be continued. I believe we are all agreed as to that.

If we were to attempt to amend the law to make it suit me exactly, to make it suit

every one of my constituents exactly, we just could not get anywhere. I say the necessities of the hour, the necessities of the occasion are such that in my humble judgment, we should pass this bill with the committee amendment and stop there.

The gentleman from Missouri [Mr. COCHRAN] criticized the committee amendment. I think he was ill advised or possibly was not advised at all. If I can understand the English language, if I understood Judge Patterson, if I understood the representatives of the Navy Department, if I understood the representatives of the other agencies that are carrying on this war work, they are not opposing this amendment. They told us they were trying as nearly as they could, in the administration of the law, to comply with what the amendment provides, even though a mandate is not written in the present law.

The committee had these agencies before it and my judgment is that as a result of those hearings and as a result of the attitude expressed by the members of the committee unanimously, by this amendment being included, and because of this debate, they are going to be doubly careful in the future, in protecting the rights of those affected by priorities and suspensions.

Mr. Chairman, I am going to vote for the bill as amended. It is not, of course, all I want, but this extension is necessary now. May I say further that Under Secretary of War Judge Patterson came before my committee and went on record, taking the position that to attempt to include additional amendments would interfere with the war effort right now. The people of the country do not want this, they know that these laws cannot be repealed at this stage of the war and they will not favor attempts to destroy them by amendments, regardless of their merits in peacetimes. Eliminate the kangaroo courts, yes, but do not hamper the war effort. None of us like war restrictions, and we must get rid of them as soon as possible after the emergency.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOBBS. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee [Mr. KEFAUVER].

Mr. KEFAUVER. Mr. Chairman, the gentleman from Ohio [Mr. JENKINS] said a few minutes ago that he thought it would be of some value to the members of the committee if we would review very briefly what the two War Power Acts previously passed provided.

Immediately after Pearl Harbor Congress gave consideration to the first War Power Act and it was approved by the two Houses of Congress and signed by the President on December 18, 1941. The first War Power Act provided, however, that it should remain in force during the continuance of the present war and for 6 months after the termination of the war or until such earlier time as the Congress by concurrent resolution or the President may designate. So we have not before us and have never had before us the matter of renewing or extending the first War Power Act.

To refresh the recollection of the Members, the first War Power Act provided in title I "coordination of executive bureaus in the interest of a more efficient concentration of government." It dealt under title II with the matter of giving the President through the various departments of the Government power to make certain contracts in connection with the war; and the third title of the first War Powers Act had to do with the matter of trading with the enemy, regulation of currency and bullion, communications, and giving the Government certain rights of censorship.

Immediately after passage of the first War Power Act the Congress gave consideration to the second War Power Act which was originally passed and approved on March 27, 1942. Under the terms of that act it did not continue for the duration of the war but until December 31, 1944. So it will expire very shortly unless renewed.

The second War Power Act contained some fifteen titles and I take it it is not important at this time to review what all of the titles provide unless some one especially wants that information. I have the law here before me.

Mr. JENSEN. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield to the gentleman from Iowa.

Mr. JENSEN. I think it would be well if the gentleman would include those 15 titles in the RECORD so that we might refresh our memory, and the public might have their memory refreshed again on what the second War Powers Act really is and what it constitutes.

Mr. KEFAUVER. May I inquire of the gentleman from Alabama if I may have a few additional minutes to read the titles of the second War Powers Act?

Mr. HOBBS. The gentleman may have all the time he desires within reasonable limits. I yield the gentleman 2 additional minutes.

Mr. KEFAUVER. Title I of the second War Powers Act deals with emergency powers of the Interstate Commerce Commission over motor and water carriers, suspending certain rules which might impede the movement of traffic.

Title II deals with the acquisition and disposition of property which is well known by all Members.

Title III deals with priority powers which were given to the Executive under which the War Production Board and other agencies operate.

Title IV has to do with the purchase by the Federal Reserve banks of Government obligations.

Title V has to do with the waiver of certain navigation and inspection laws in order to facilitate the movement of traffic on rivers and in ports.

Title VI has to do with the power of requisitioning property that might be needed in connection with the war effort.

Title VII deals with political activity, and it exempted from the Hatch Act certain people working in a purely advisory capacity in connection with the war activity where they are not receiving any salary from the Federal Government.

Title VIII is entitled "Protection of War Industries and Protection of Resources Subject to Hazards of Forest Fires." It gives the President the right to make certain rules and regulations in connection therewith and to use the Civilian Conservation Corps to fight forest fires.

Title IX provides for free postage for soldiers, sailors, and marines.

Title X has to do with the naturalization of persons serving in the armed forces of the United States during the present war, giving them certain benefits in connection with naturalization laws by virtue of their service in the Army of the United States.

Title XI provides and authorizes the acceptance of conditional gifts to further the war program, and provides for the setting up of a section in the Treasury so the United States could receive gifts from individuals for the prosecution of the war.

Title XII has to do with the coinage of 5-cent pieces; the bullion and make-up of 5-cent pieces.

Title XIII deals with the inspection and audit of war contractors, giving the Executive the right to inspect certain books of war contractors who have contracts with the United States Government.

Title XIV is the utilization of vital war information, restraining the use of certain information in certain cases so as not to make it public where it had to do with the carrying on of the war.

Title XV sets the time limit for the Second War Powers Act to expire on December 31, 1944.

Mr. HANCOCK. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield to the gentleman from New York.

Mr. HANCOCK. May I call the gentleman's attention to the fact that title VIII is not extended by this bill.

Mr. KEFAUVER. That is correct.

Mr. HANCOCK. That is the title that authorized the establishment of the C. C. C., and for fighting forest fires.

We do not have a C. C. C. any more.

Mr. KEFAUVER. That is right; title VIII is not continued by this bill.

Mr. JENSEN. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield to the gentleman from Iowa.

Mr. JENSEN. The Second War Powers Act gives the President permission to act on all these matters as he sees fit without the consent of Congress. That is the authority we are giving him, is it not?

Mr. KEFAUVER. No. The authority is set forth in the provisions here. It limits what the Executive can do in accordance with the law we passed. It gives him the authority to do certain things under regulations set forth in the acts themselves by Congress which were necessary for the war effort.

Mr. JENSEN. Yes; I understand that; but after we passed the War Powers Act, we gave to the President the authority to act under his own discretion.

Mr. KEFAUVER. Not at all. It gave the President greater authority to do many things in connection with certain

matters, as has been recited here, that have to do with the prosecution of the war. If the gentleman will read Public Law 509 of the Seventy-seventh Congress, he will find that it says exactly what it gives the President authority to do and the conditions under which he may do it. All the bill now before us does is, of course, to extend the Second War Powers Act for 1 more year, with title VIII eliminated, and with an amendment to title III, which is the section that deals with priorities.

Mr. JENSEN. The reason I am bringing up that point is simply that there are many people in the United States who do not realize that the President does have great powers handed to him by the Congress in this all-out war emergency, and that, of course, it is necessary to give the President these unlimited powers, which we hope he will use to the best advantage possible in winning the war.

Mr. KEFAUVER. I thank the gentleman. I think the powers given under these war acts are definitely required. When the President assumed the role of Commander in Chief he had to have these powers. The Constitution contemplated a concentration of power for war purposes.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. HOBBS. Mr. Chairman, I yield 4 additional minutes to the gentleman from Tennessee.

Mr. KEFAUVER. In connection with the amendment which is placed on section 3, the priority section, I think we should state again just what this amendment does so as to have the legislative record clear. It deals only with a suspension order by the War Production Board or the agencies operating under this section after a person or firm has had an allocation. You will recall that in the Stabilization Act a right of appeal was given in O. P. A. cases where suspension orders were issued. This gives the same right, or substantially the same right, to all the agencies operating under the Second War Powers Act that was given to the citizen by the Stabilization Act in regard to matters under the O. P. A. If a person has an allocation and it is suspended for some reason or violation, he has his right to go to court. If it is modified or, if you want to call it that, suspended by reason of some general cut-back of the amount of material that may be allocated for civilian use in conformity with the general program of the War Production Board, it is not intended to give him any right to question in court the cut-back required in order to have more of the strategic material for the war purposes. We had under consideration in the committee an amendment which would give the person a right of injunction when an allocation was refused him. It was insisted and urged by some members of the committee that he should have a right to injunctive relief where an allocation was refused in the first instance when a person applied for one, but statements of all of the agencies affected that this would divide the allocating power out to all the district courts over the country,

who would not have an all-over picture of the situation, and that in order to handle priorities intelligently and effectively the authority had to be concentrated in one group, led the committee in its wisdom—and I think it decided correctly—to vote down the amendment which would give an appeal where an application was made for an allocation in the first instance.

I take it, in order to go into court and ask for an injunction, you have to show that you have no adequate remedy at law and that you would be irreparably damaged if the suspension order were put into effect. You must exhaust your effort to secure relief through administrative appeal before being entitled to injunctive relief.

I do not believe that this will interfere with the war effort. The agencies appeared and they did not express any opposition to giving this right of injunctive process, and, as a matter of fact, they said the citizen had it already.

Mr. VOORHIS of California. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield to the gentleman from California.

Mr. VOORHIS of California. I just want to ask the gentleman what would happen in a case of this kind: Suppose the War Department finds that its needs for a certain type of war equipment are much greater than they had thought they were going to be a few days before, or a week before, and they therefore find it very desirable to encourage an increased production in that particular field, and perhaps, in order to get the raw material to make that possible, they have to take it away from some other field. How would this provision affect a situation of that sort?

Mr. KEFAUVER. It will not affect it. There will be no right of injunctive process or appeal to a court in that case.

Mr. VOORHIS of California. Does the gentleman think the language makes that plain?

Mr. KEFAUVER. I think the language makes it plain, and certainly the proceedings of the Committee on the Judiciary, the report of the committee, and the statement of the chairman and the ranking minority member of the committee make it plain, if there is any doubt about that.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. HANCOCK. Mr. Chairman, I yield 10 minutes to the gentleman from Indiana [Mr. SPRINGER].

Mr. SPRINGER. Mr. Chairman, at the outset of my remarks on this subject, I want to direct my remarks to the effect this bill might or could have, with respect to the war effort. Of course, it is the policy of our committee, as was evidenced continuously throughout the hearings, that we do not wish in any manner to disturb or disrupt the war effort. Whatever is necessary, and whatever is essential, for use in this war effort, that we want to give, because it is the policy, I know, of every Member of this great law-making body, that we desire this war to be ended as quickly as possible, and with a complete victory and by the complete surrender of our

enemies. The different titles of the Second War Powers Act have been explained very carefully. During the time that we were discussing in our committee the various features of this particular legislation, which extends the Second War Powers Act for 1 year, we heard quite a lot of evidence. As you know, the present War Powers Act expires on the 31st of December of this year and action at this time is necessary in the event the provisions of that bill are extended. It is the desire of all Members to grant every authority necessary to successfully prosecute this war to a speedy conclusion. In the hearings in the Judiciary Committee the question arose respecting the disposition of matters within the departments. I recall especially, the question arose with reference to the War Production Board; this matter was gone into very carefully, concerning the procedure, the hearings before the first hearing agent on the question of priorities, and then the appeal from that agent to the Administrator himself; and, in certain cases, after the hearings had been had before the hearing agent or the hearing authority, then the matter could be taken before the five-man appeal board within the department. Those men who tried the case, and before whom the appeal is taken, are all members of that department. We found that during the time the War Production Board has been in existence they have had some 42,000 of these particular application cases which have been appealed from the first hearing agent, either to the appeal board within the department or before the Administrator.

Out of those 42,000 cases in which there had been an appeal, there have been modifications, or there have been reversals, in whole or in part, in some 38,000 cases. In other words, they have been handling many matters; in these appeals they have been evidently giving fair consideration, because certainly that is a very large percentage of modifications with respect to either reversals, in whole or in part, or modifications of the original orders which were made in those particular cases.

Of course, we have before us the question of favoritism in allocations; we have the question of suspension orders and of closing orders. Those questions were considered, and they had a compelling influence upon members in writing into this measure the amendment which appears as title 3, on page 2, of the bill now before the Committee. Some of the members of the committee have taken the position that the amendment embraced in this measure does not give any more right to the people than they already have under the original Second War Powers Act. It was admitted by those who represented the Department that under existing law and under the Second War Powers Act, the right of the individual or the citizens, the firms, or corporations involved, to go into court and seek injunctive relief, where they believed they were aggrieved by reason of the suspension orders or the closing orders, or matters which directly affected their business or the operation of their plant, was permitted. The Second War

Powers Act does not clearly define that right. We sought to clarify this measure by approving an amendment, which is set forth as title 3, on page 2. Without doubt that amendment gives the right in those questions of suspension, or in the denial of a stay of suspension—and those are the most drastic penalties which can be asserted by the agency under this bill. This amendment would give the right to the people to go into court and seek injunctive relief where they are aggrieved by that order being oppressive and wrong, and where the same operates to destroy the business which they are seeking to operate.

One of the thoughts that impressed me, as we heard the testimony with respect to this particular measure and its extension, was the fact that the people should have the right to appeal to a court, rather than to submit all of their important questions to an appeal board within the department or the agency, which is composed of men who are employed by that particular agency, and who are drawing their salaries from that particular agency. Judge Patterson, the Under Secretary of War came before our committee and expressly stated that direct appeals in allocations could and would interfere with the prosecution of the war. Of course, the members of this committee do not want to do anything with respect to this measure which will in any way deter or interfere with the prosecution of the war. The war must go forward. It must go forward to a speedy conclusion. With this amendment now in the bill, I intend to support it. I firmly believe that as far as the question of the prosecution of the war is concerned, it is highly essential and absolutely necessary that this act be extended for the period of 1 year, and that the powers and rights vested in the various agencies of Government under this existing law be continued until this war ends. We cannot step in at this time and take any action which will in any way interfere with our war effort.

With the ending of this war, legislation of this character should, of course, be entirely eliminated from the statutes and the people left free again and given the right to assert their own independence as free American citizens. I propose to support this measure and I propose to vote to continue the Second War Powers Act for the period of 1 year as provided in this measure, for the purpose of aiding the war effort.

Mr. KEEFE. Mr. Chairman, will the gentleman yield?

Mr. SPRINGER. I yield to my distinguished friend from Wisconsin.

Mr. KEEFE. I have not been privileged to hear all of the arguments on this bill, but I have heard the last four statements. I would like very much to understand exactly what this amendment to title 3 purports to do.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. HANCOCK. Mr. Chairman, I yield 3 additional minutes to the gentleman from Indiana.

Mr. KEEFE. Am I correct in the assumption that the provisions of this amendment to Title 3 relate only to

circumstances where a priority or an allocation order has already been issued by the War Production Board and the protection afforded to the citizen applies only as against attempts to recall the priority order or allocation that may have theretofore been given?

Mr. SPRINGER. I wish to thank the gentleman for propounding that question and I will attempt to answer it.

In the first place one must go through the entire proceeding in the Department before one is entitled to go into court to seek injunctive relief as is provided under Title 3 of the pending bill. In other words, the matter would be heard before this hearing agent; then an appeal might be taken either to the administrator of that department, or to the 5-man appeals board. The case is finally decided and the order rendered. If the citizen is then aggrieved by the final determination by that board, or other administrative agent, the citizen can seek so-called injunctive relief before the courts. This bill provides, as the gentleman knows, that the jurisdiction is where the citizen himself resides.

Mr. KEEFE. I would thank the gentleman if he would yield for a further answer; that does not specifically touch the point I had in mind. Am I correct in the assumption that there is nothing in this amendment to Title 3 to disturb the present position or authority of the War Production Board and their jurisdiction to make allocations and to grant or deny priorities in the first instance?

Mr. SPRINGER. There is nothing in this bill which disturbs the right of the War Production Board to operate as it is now operating. The only thing this bill does is to give the additional right to the person, firm, or corporation, or whoever is involved, to go in to the courts and seek injunctive relief if he is aggrieved by the final order which is issued and entered by the War Production Board, or any other agency using such power. This amendment merely clarifies and makes certain that right to the people. From the statements made by the various departments and heads of Government, they agree to this amendment. They contend that power is already vested in the people, but this amendment clarifies the bill and makes certain that the power to resort to the courts rests with the people.

Mr. KEEFE. I may say to the gentleman that he still does not reach the point I had in mind. I should like to have it clarified for the RECORD and I hope some other Member will use his time to clarify the point I am trying to reach.

The CHAIRMAN. The time of the gentleman from Indiana has again expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 10 minutes to the gentleman from Alabama [Mr. HOBBS].

Mr. KEEFE. Will the gentleman yield?

Mr. HOBBS. I will be so happy to yield, but I have heard the question asked twice, and I believe I can answer it.

Mr. KEEFE. For continuity's sake in the RECORD, I just want to clear that one question up right now so that there will

not be any doubt about it so far as the RECORD is concerned.

Mr. HOBBS. I will be so happy to do so. In fact, that is one of the reasons I am rising at this time. If I do not do it, please call my attention to the fact at the end of my statement.

The first thing I wish to do is to pay tribute to the administration, at the higher levels, of these agencies that have been administering the Second War Powers Act and those powers that have been delegated in pursuance thereof. We were tremendously impressed by the testimony before our committee in these hearings, giving us the facts with reference to how this trust thus imposed has been administered. Their record shows that the men who are discharging this great responsibility are excellent public servants, extremely interested in doing their duty, their whole duty, and nothing but their duty, with fairness to "John Q. Citizen" and all affected. They frankly admitted that mistakes have been made, but most of them have been made on the lower levels by men who in spite of care exercised in their selection were human beings and made mistakes sometimes.

Mr. Chairman, there are only two committee amendments to the pending bill. One is a mere matter of clarification to bring about technical accuracy. Instead of referring to a concurrent resolution of Congress which, according to a strained construction, would include the President because of his approval and veto powers, we recommend the change to concurrent resolution by the two Houses of Congress, which excludes the President. In the very next sentence the President is empowered also to declare the termination of the act before the date to which its life is conditionally extended. That amendment need not worry anyone and does not.

The gentleman from Missouri [Mr. COCHRAN] and the gentleman from Illinois [Mr. SABATH] at first thought that the second committee amendment was wrong and dangerous, but have abandoned the field, because they were honestly mistaken about it. Probably the trouble has been as explained by the gentleman from Illinois [Mr. SABATH], when he said that he was opposing the Walter amendment that was offered in our committee and there voted down. May I, therefore, address myself for a few minutes to the effect of this second amendment which the gentleman from Iowa [Mr. GWYNNE] thinks is innocuous?

Mr. Chairman, without abating one jot or one tittle of the power of any of these agencies to control the distribution of strategic war materials, in no sense giving any power to diminish the stock pile for war purposes of any of these materials, in no sense curtailing nor hampering any necessary power, we propose this amendment as fair, just, and reasonable to all parties concerned. This would affect only the least of the three modes of what might be loosely called appeal. The first one is where an application for priority or for allocation is denied in the regular routine under a general order. That goes into the agency and may or may not find

relief for the appellant. But as my distinguished confrere the gentleman from Indiana [Mr. SPRINGER] has pointed out, we find that in that field, which we explored fully, ample justice has been done in many cases.

Then the second category of the three categories of the so-called appeals is where, admitting that the law was against the citizen seeking relief, he was asking for an exception to be made in his case because of a peculiar hardship or necessity, which transcended the need served by the general order. There again the appeal has been within the agency, and most of them, in fact 90 percent of them, have been recommended by the one in the field who denied the relief sought. So we cannot possibly afford to jeopardize expedition by running the risk of overwhelming the courts and short-circuiting war necessities in 25,000 cases a year when there is so little apparent need. In 9 out of 10 cases the relief sought has been granted.

Mr. SPRINGER. Mr. Chairman, will the gentleman yield?

Mr. HOBBS. I am delighted to yield to the gentleman from Indiana.

Mr. SPRINGER. May I ask the gentleman to state if it is not a fact that the heads of these agencies gave testimony before our committee that there had been but two injunction suits filed?

Mr. HOBBS. Yes; that is so. The third category of the so-called appeals is the one in which this amendment operates. It simply says that where there has been an allocation of strategic war material or priority given by one of these agencies, and any citizen or firm or corporation has not exercised its right in accordance with the understanding the board has of its allocation or priority assistance, then an order is issued, called a suspension order, as to the rights being exercised by that citizen or that person or that firm. It is called generally a sanction. Some people call it a punishment. It has been challenged in the courts on the ground that it is a punishment, not in accordance with the penalties fixed by law. But the Supreme Court has upheld it as an honest, fair administration of the allocation power under the Second War Powers Act. So that is settled.

It is only in that limited sense that this amendment gives any right at all, and then in that third group of so-called appeals it does operate. It could not by any stretch of the imagination alter the power of any board to preserve strategic war material or to further the war effort or to expedite it.

What does it do then? It simply says that where this particular situation comes into the picture, then the citizen shall have the right to go into the district court in the district of his major place of business, his home court, and ask the court to enjoin this suspension of the right he had been exercising. We recognize that citizens generally are not familiar with the labyrinthine spread of the agencies. He may not even know the name of the agency that has, according to his contention, in the vernacular, "Done him wrong." He can tell his story

to the judge through his attorney and get a temporary restraining order.

How shall he reach that agency?

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield to the gentleman from Alabama the remainder of the time assigned to this side.

Mr. REED of New York. Mr. Chairman, will the gentleman yield?

Mr. HOBBS. I am delighted to yield to the gentleman from New York.

Mr. REED of New York. I notice that the committee amendment includes this language:

Any action to enjoin or set aside any such order shall be brought within 5 days after the service thereof.

It seems to me that is a very short period of time. A large corporation with a highly trained legal staff could perhaps take the necessary steps very quickly, but corporations or people of limited means, perhaps dealing with a lawyer in the country of less experience, might require more time. What does the gentleman think of that?

Mr. HOBBS. I think I will be able to satisfy the gentleman perfectly on that. The purpose of fixing only a 5-day limitation is to insure the progress of our war effort. It is, therefore, aimed at getting justice quickly, while it is fresh in the mind of the man who thinks he has been wronged. There is no question that that 5 days will be ample for him, because we are putting the court at his door. There may be doubt as to whether the Government would have time to answer within the limited time that is given it, but there certainly is not that doubt as to the citizen.

In the next place, we not only give him the right at his door but we also reach out the strong arm of this law and bring that agency within his reach whether he knows its name or not, whether he knows its officials' names or not, whether he knows the name of its head, or anything else about it. He can reach that agency by serving the process on the local agent or by sending a registered-mail letter to the agency; or if he does not know where to direct that letter, then he can send it to the Attorney General of the United States, who under the law is charged with representing every agency and every department, and then we trust to the Attorney General to get the word to the proper agency in time for them, within 10 days before the return date, to appear in that local court.

That is all the amendment does, but it does do those things. I cannot conceive how anyone can object to giving full, free, and ample access to his court to an American citizen, who foots the bill for the maintenance of the courts.

There is no objection to this by the departments affected insofar as vesting venue in the local court is concerned. They want it. The only question is as to whether or not it might possibly interfere with the powers, almost omnipotent powers, granted under the Second War Powers Act and already conferred upon these agencies. We respectfully submit that there is nothing to justify that fear.

None of us would have that possibly occur, and we are going to see to it that this is made as abundantly clear as we possibly can in the record of this debate so that there can be no question of misunderstanding the plain meaning of this amendment.

Mr. ROBSION of Kentucky. Mr. Chairman, will the gentleman yield?

Mr. HOBBS. I am delighted to yield to my colleague from Kentucky.

Mr. ROBSION of Kentucky. The gentleman referred to appeals to the Supreme Court from these orders.

Mr. HOBBS. No, sir.

Mr. ROBSION of Kentucky. I mean, that we have an appeal to the courts without the provisions of this bill, and that the Supreme Court in a case passed upon one of these questions. Did they not hold, and will not that be the law that every citizen will be up against, that it will be up to the citizen to show that there was no evidence on which the order or suspension or allocation was made?

Mr. HOBBS. I think the rule to which the gentleman adverts is that there must be substantial evidence to justify the ruling.

Mr. ROBSION of Kentucky. I mean that the Government would have to show that.

Mr. HOBBS. Yes, sir; the record must so show.

Mr. ROBSION of Kentucky. But before the aggrieved citizen could get relief, he would have to show that there was no substantial evidence.

Mr. HOBBS. It depends on which way the appeal arises.

Mr. ROBSION of Kentucky. I am talking of the situation where a citizen appeals.

Mr. HOBBS. If you are the appellant, the burden of proof is upon you. If the other man is the appellant the burden of proof is on him.

Mr. ROBSION of Kentucky. The way it works out is that as a matter of law you can get to the Supreme Court but you really have very little relief after you get in the court.

Mr. HOBBS. I do not think so. I think you will find that the courts will have the disposition which has been the ideal of all courts to be absolutely fair and just and to holding the scales of justice in absolute balance.

Mr. ROBSION of Kentucky. They may have, under this amendment, but not in the appeal the gentleman referred to to the Supreme Court.

The CHAIRMAN. The time of the gentleman has expired. All time has expired.

The Clerk will read.

The Clerk read as follows:

Be it enacted, etc., That title XV, section 1501, of the Second War Powers Act, 1942, approved March 27, 1942, is amended to read as follows:

"Sec. 1501. Titles I to VII, inclusive, and titles IX, XI, and XIV of this act, and the amendments to existing law made by any such title, shall remain in force only until December 31, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate, and after such amendments cease to be in force any provision of law amended thereby shall be in full force and effect as though this act had not been enacted; but no court proceeding

brought under any such title shall abate by reason of the termination hereunder of such title."

Committee amendment: On page 2, line 1, after the word "the", insert "two Houses of."

The committee amendment was agreed to.

The Clerk read as follows:

Committee amendment: On page 2, line 8, insert the following:

"Title III of the Second War Powers Act, 1942, is hereby amended by adding at the end thereof the following:

"(9) The district courts of the United States are hereby given exclusive jurisdiction to enjoin or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer, or agency, acting or purporting to act hereunder, or under any other law or authority.

"Any action to enjoin or set aside any such order shall be brought within 5 days after the service thereof.

"No suspension order shall take effect within 5 days after it has been served, or, if an application for a stay is made to the issuing authority within such 5-day period, until the expiration of 5 days after service of an order denying the stay.

"The venue of any such suit shall be in the district court of the United States for the district in which the petitioner has his principal place of business; and the respondent shall be subject to the jurisdiction of such court after 10 days before the return day of the writ, either when (1) process shall have been served on any district manager or other agent of the respondent of similar or superior status; or (2) notice by registered mail shall have been given to respondent, or to the office of the Attorney General of the United States."

Mr. GWYNNE. Mr. Chairman, I offer an amendment in the nature of a substitute for the committee amendment, which is at the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. GWYNNE, of Iowa: Page 2, line 9, strike out the remainder of the bill and insert:

"(9) Nothing in this act shall be construed as giving the President or any Federal official or employee the right to inflict or impose penalties, sanctions, or suspension orders of any kind, remedial or otherwise, not both specified by statute and expressly delegated to such agency or person by lawful authority."

Mr. GWYNNE. Mr. Chairman, the question presented here is a very simple one. My amendment, if adopted, would insert the language of that amendment, instead of the committee amendment, beginning on page 2, line 10. If this amendment is adopted, the situation will be as follows: The right of the W. P. B. or any agency chosen by the President to allocate strategic material will not be interfered with. They may still say that you can have a thousand tons of steel for a certain purpose and that I can have none.

The only difference is it requires the War Production Board or any other agency to enforce the law, to punish or restrain violations of it by recourse to the courts in the proper way. That is to say, if I should be allocated as a manufacturer, a certain amount of steel and I am using it in violation of the allocation order, the moment I do that one of two things may happen. The

Government may go into court and get an injunction restraining me from proceeding; or, second, they can punish me in the criminal courts. If the amendment I propose is not adopted and you rely upon this proposed committee amendment, this is the situation you will have; you will have the same situation we had in the Stuart case, which was this: Here was a man engaged in the business of selling gasoline. He violated certain rationing orders. They had a regulation in the O. P. A. that anyone who did violate the rationing rules and regulations would have taken away from him his right to use the rationed material for the balance of the year. In other words, instead of going into court for an injunction to restrain him from violating the law, instead of prosecuting him as every citizen should be, they impose their own penalty, which in substance is to nail a board over his door.

The committee amendment does not touch that situation. It is my contention that you always had the right to go into court, and it is not a new right given by the committee amendment. Bear in mind, the Supreme Court, in the Stuart case has held, in construing the Second War Powers Act, that Congress gave the power to make suspensions by these governmental agencies. I never intended to, but that is the way the court has construed it. So, in effect, though we may give the court jurisdiction to hear injunction cases to prevent these suspensions, nevertheless, the court would have no real power because of the decision in the Stuart case. In other words, the Court must hold that it is without power to act. An agency can put you out of business. You cannot do anything about it because the Court has already said that the law we wrote meant that very thing.

What I am doing by this amendment is to simply restate what I think we meant in the first place. We are saying: "We are not giving you, the War Production Board, authority to set yourself up as a court. We are not making you a Constitution maker to set up some tribunal, some kangaroo court of your own, and to impose some penalty upon a citizen that Congress did not have in mind."

It seems to me the question is simple. Are we going to have constitutional government in this country, or are we not? They talk about hamstringing the War Production Board. All they have to do, if there is a violation of the law, is to go into court and get an injunction. If they cannot operate with the weapons that we have heretofore been satisfied to give to citizens and have heretofore been satisfied to give to our own Government, then it seems to me we have come to a pretty pass in this country, and the war that our soldiers are fighting will be a fruitless victory because we are setting up the very fascism, the very lack of constitutional authority in this country that we are supposed to be fighting against.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. HOBBS. I rise in opposition to the amendment.

Mr. Chairman, there will be no need of our boys fighting and dying if you are going to kill the war effort at home. That is exactly what this Gwynne amendment would do in large measure. What good is it to try to safeguard the stockpile of aluminum if the man to whom aluminum is allocated is going to use it to build juke boxes, as has been the case in several instances, and then deny this Government, these War Production Board men, who are trying to save strategic war materials, the right to go in and stop that misappropriation of aluminum quickly?

Give those who abuse their privileges the right to resort to the courts. How long does it take for an appeal? It takes 90 days to prepare a bill of exceptions. So it is absolutely preposterous. There have been 42,559 cases of 1 class. The courts of the United States handle an average of 600 cases a year each. Now you want to dump 50,000 additional cases into the lap of the courts? It means you would simply kill the allocation power and there would be no preservation of the war materials that our boys need. That was the opinion of the committee.

The Walter amendment which sought to amend my amendment—which is the second committee amendment—was debated fully for a couple of days in our committee. It is very similar to the Gwynne amendment, and that was finally defeated by a narrow margin.

Mr. GWYNNE. Mr. Chairman, will the gentleman yield?

Mr. HOBBS. Of course, I am happy to yield to my esteemed colleague.

Mr. GWYNNE. I am certain the gentleman does not think my amendment is like the Walter amendment.

Mr. HOBBS. I thought it was or I would not have said it. If I have done the gentleman a wrong I apologize, for I have the highest regard for the gentleman from Iowa. If I did not think his amendment was very similar to the Walter amendment I would not have said that. I withdraw the remark, then. Whatever it is, it stands in its stark nakedness before you now. You jeopardize the very thing that the Second War Powers Act is aimed to do, to preserve the small and diminishing stockpiles of strategic war materials that we need to win this war. That is what this act is fighting for, to preserve them and to uphold the hands of these agencies that are doing their best to preserve these precious metals that will enable us to win this war. I beg of you as you love your country, and all of you do, and there is not a man here who loves it any more than the gentleman from Iowa, JOHN GWYNNE, not to make the mistake of adopting this amendment which would choke down and throttle these agencies in their effort to help us win the war.

Mr. CALVIN D. JOHNSON. Mr. Chairman, will the gentleman yield?

Mr. HOBBS. I am glad to yield to the gentleman from Illinois.

Mr. CALVIN D. JOHNSON. Regardless of which amendment was adopted, the war agencies have the additional safeguard of allocating materials on a

quarterly basis to those who receive them. It would at the most be a matter of 3 months' supply getting away, regardless of which it was.

Mr. HOBBS. That is right. Sometimes it is 3 months and sometimes 1 month. It does not make any difference. If you give the right to resort to the courts, you would not have a Chinaman's chance of doing anything with any violator, no matter how flagrant his sin might be, for a year, at least. I beg the Members of this House not to make this mistake, and I am sure you will not, because we are standing on holy ground, ground hallowed by the blood of our boys over yonder, ground that is hallowed here by the blood of our boys that have fallen in accidents here because of inadequate supplies of vital war materials. Again I beg of you not to make the mistake of adopting this amendment, although it has the highest sanction, coming from the distinguished and honorable quarter it comes from.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. COCHRAN and Mr. ROBSION of Kentucky rose.

The CHAIRMAN. The Chair recognized the gentleman from Kentucky, a member of the committee.

Mr. ROBSION of Kentucky. Mr. Chairman, I ask unanimous consent to proceed for 3 additional minutes, 8 in all.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr. ROBSION of Kentucky. Mr. Chairman, I do not believe my colleague the gentleman from Alabama [Mr. HOBBS] understands the amendment offered by the gentleman from Iowa [Mr. GWYNNE]. The gentleman from Alabama [Mr. HOBBS] refers to our boys in the service. Many of us have sons in the service and many of the Members of Congress have lost sons in the service and they are quite as anxious to win the war as our friend from Alabama. Neither party in the House has a monopoly on patriotism or on loyalty or devotion to our country. I am quite sure that no Member of the House desires to obstruct or interfere with the prosecution of the war. By almost unanimous vote we granted to the President extraordinary powers provided in the so-called Second War Powers Act of 1942. I favor the renewal of those powers and, I am sure, this is the attitude of practically every Member of the House.

Those who are in charge of our war effort have insisted that these extraordinary powers are necessary for the prosecution of the war. Neither the President nor those in charge of our war effort have asked for any additional power. Many witnesses before our Judiciary Committee complained of the arbitrary action of some of the officers and agencies of the Government. It was charged that penalties, sanctions, and suspensions were invoked and imposed in violation of law and without authority of any statute. The Gwynne amendment merely provides that the executive officers and agencies set up by the President cannot invoke penalties, sanctions,

or suspensions unless such penalties, sanctions, or suspensions are expressly provided by statute and authority delegated to such officer or agency to invoke such penalties, sanctions, or suspensions. It does not take away one word or syllable of the War Powers Act of the Congress under which the President and his subordinates and agencies are presumed to be acting to carry on the war.

It has been a matter of general complaint and comment throughout the Nation that many officers and agencies of the executive branch of the Federal Government have by Executive orders or directives imposed these penalties, sanctions, and suspensions in violation of law and the authority delegated to them by Congress. In fact, we have heard over and over that the executive branch has issued almost as many Executive orders and directives as acts passed by the Congress. These officers and agencies carry on their duties under these Executive orders and directives, giving them the force and effect of law, when they are in fact contrary to the acts passed by the Congress. I have heard many Democrats on the floor of the House and in public speeches denounce these so-called bureaucrats for usurping the power of Congress by the use of Executive orders and directives. The Gwynne amendment merely forbids the imposition of penalties, sanctions, and suspensions unless such penalties, sanctions, and suspensions have been and are authorized by acts of Congress. I cannot understand why any Member of Congress should object to this amendment. If the executive branch desires additional power or authority to carry on the war, there is little doubt but what Congress will grant such power promptly. If officers and agencies of the Government are permitted to disregard the acts of Congress and impose their own wishes, whims, and will in dealing with citizens of our country, then we have abandoned constitutional government and are subject to the autocratic and dictatorial rule of those of the executive branch of the Government, and we have substituted the totalitarian rule of Hitler for free government with law.

Mr. MAY. Will the gentleman yield?

Mr. ROBSION of Kentucky. I yield to the gentleman from Kentucky.

Mr. MAY. As a matter of fact the only thing this amendment does is to give anybody aggrieved the right to go to court which we should have put in the original bill.

Mr. ROBSION of Kentucky. It does give the aggrieved person the right to take his case into court after it has been reviewed by the executive agencies set up for that purpose but the amendment goes further than that. It says to the executive officers and agencies that they cannot go out and make the laws. Their acts must be predicated upon the laws passed by Congress. If you vote against this amendment, I hope you will be consistent and hereafter instead of complaining about the bureaucrats, you will be prepared to defend everything that the bureaucrats do through their executive orders and directives throughout the country. We simply want the executive

branch of the Government to operate within the law and if additional laws are required to successfully carry on the war point out to the Congress what is needed and Congress no doubt will aid in every way possible in the successful prosecution of the war.

If the Gwynne amendment is defeated, I shall support this bill with the amendment adopted by the Judiciary Committee of the House. It gives the right of review by the Federal courts to aggrieved parties after their case has been reviewed by the executive agencies set up by the executive branch.

Mr. COCHRAN. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, I have read this committee amendment with extreme care since I addressed the committee. I have not changed my views.

I was very much impressed by the statement of the gentleman from Alabama [Mr. HOBBS]. As a matter of fact, the argument so impressed me that I propose to vote against the amendment offered by the gentleman from Iowa [Mr. GWYNNE]. I cannot conceive of any words that could be put together which would be a stronger argument against the committee amendment, the Hobbs amendment, so-called, than the speech the gentleman himself made here 5 minutes ago. The Hobbs amendment should be defeated for the same reasons that the said the Gwynne amendment should be defeated. There is no doubt about that. He made a fine argument against the amendment offered by the gentleman from Iowa and likewise a grand argument against his own amendment.

We have allocated the aluminum he talks about, the copper and other strategic materials; we have granted priorities because the War Production Board did not feel at the time that it needed this material or all of the material for war purposes. Since then, however, comes the call from all fronts for more supplies of every nature.

I have the largest small arms and ammunition plant in the world in my district. It formerly ran on a 24-hour basis, Sundays included. Then they cut production to 8 hours and stopped work on Sundays. Twenty-five miles away we have the largest TNT and DNT plant in the country. They shut it down entirely because they thought they had all the ammunition they needed. But what happened? They are both going again because General Eisenhower said, "Send us ammunition," and because General MacArthur said, "Send us ammunition." General Eisenhower told you that they are using ammunition today that they did not expect to touch until the middle of 1945. If the W. P. B. allocates this material and it develops that it is needed for war purposes and the W. P. B. says so, it should revoke the priority, and stop the allocation and the courts should have no jurisdiction.

Under the amendment you provide that the individual partnership or corporation may go into the courts. I am not going to vote for any amendments that will cripple the War Powers Act. You can talk all about, "There is no use of having a war" or "winning the war

unless we do this or do that." We better win the war first, and then we can turn around and operate as we should operate under the Constitution. Yes, the Government agencies have powers, I will say to the gentleman from Kentucky [Mr. ROBSION] and we delegated them to the Chief Executive, the Commander in Chief. Criticize yourselves, if you want to criticize anybody for delegating powers, but do not criticize the officials for administering the laws that you pass.

Mr. HOBBS. Mr. Chairman, will the gentleman yield?

Mr. COCHRAN. I yield to the gentleman from Alabama.

Mr. HOBBS. I know that the distinguished gentleman from Missouri does not wish to make a misstatement of fact, and I am sure in my judgment that he has done so with respect to my amendment, when he says that this would affect the right to withdraw from allocation strategic war material. It does not do anything of the sort.

Mr. COCHRAN. If it does not, then put a proviso on the amendment to that effect.

Mr. HOBBS. The testimony before our committee has been uniform that the right which is expressed in my amendment now exists; that this would make no substantial change in the law, and that the agencies, while they would prefer not having anything of this kind written into the law, would have no objection to an amendment such as this.

Mr. COCHRAN. If that be so why add it to existing law? I hope that both amendments are voted down and the best argument advanced as to why that should be done was made by the gentleman from Alabama [Mr. HOBBS].

Mr. SUMNERS of Texas. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, we are going to take a very important vote directly. This is what I believe to have been the position, speaking generally, of the Committee on the Judiciary that reported this bill: It considered of first importance the prosecution of the war. Next, doing what it could to remove the just ground of complaint on the part of private citizens as to the autocratic and tyrannical exercise of power by some persons connected with the administrative agencies of the Government. I should like to restate that. Speaking generally, the committee recognized the first importance of the conduct of this war and the making available for its successful prosecution all of the material which we possess, in the first instance. Where there is so large a personnel as that entrusted with the responsibility of administering these bureaus, there come instances and situations where there is an unnecessary, abusive, and tyrannical exercise of power, which not only is not in the interest of the prosecution of the war but is contrary to the best interests of the country prosecuting the war.

I think no member of this committee has any apology for this amendment. I see no reason why we should apologize for an attempt to protect the constitutional rights of a private citizen as far as we can do so and not interfere with the

war effort. That is what we have done. It is that sort of a bill we have brought in here. It has been thoroughly considered. I sincerely hope, with all respect to my friend—and we have no better member of our committee than the gentleman who has offered this amendment, Mr. GWYNNE—that his amendment will not be agreed to. Let us not disturb the harmony and the effectiveness of this bill which this committee has brought in here after working on it a long time.

Mr. MAY. Mr. Chairman, will the gentleman yield?

Mr. SUMNERS of Texas. I yield to the gentleman from Kentucky.

Mr. MAY. How much delay can occur under the provisions of the committee bill as reported in connection with the granting of these restraining orders or injunctions?

Mr. SUMNERS of Texas. It is very difficult to answer that question as to when the court may act on the application for the injunction, probably immediately upon the application for the temporary restraining order. There are two 5-day periods when the order of the agency is suspended. The gentleman is a good lawyer and understands the situation. It depends on the condition of the court docket, on the disposition of the court, and a good many other things. My recollection is there is a stay of 5 days following the adverse order of the agency in which the aggrieved person may apply to the court for a temporary restraining order, and another 5-day stay after that application.

Mr. GWYNNE. Mr. Chairman, will the gentleman yield?

Mr. SUMNERS of Texas. I yield to the gentleman from Iowa.

Mr. GWYNNE. There would not be any delay at all unless the sitting judge thought that the facts authorized the granting of a temporary injunction.

Mr. MAY. Let me get definite on it. I understand that under this amendment the application must be made and disposed of within 5 days?

Mr. SUMNERS of Texas. No. The application for the injunction must be made within 5 days after the order of the agency. There is a stay of 5 days.

Mr. ROBSION of Kentucky. Mr. Chairman, will the gentleman yield?

Mr. SUMNERS of Texas. I yield to the gentleman from Kentucky.

Mr. ROBSION of Kentucky. Does my distinguished chairman favor any of these agencies of the Government or representatives of the Government applying penalties, sanctions, or suspensions unless such penalties, sanctions, or suspensions have been delegated to the executive branch or to this agency by statute, by act of Congress?

Mr. SUMNERS of Texas. I dare say to my distinguished friend from Kentucky that when you come to construe the words "specific designation" you get into a pretty broad and difficult territory when the exercise of a broad general war power is involved, a power being exercised in the conduct of a war.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I ask unanimous consent that all

debate on this amendment and all amendments thereto close in 7 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. WRIGHT. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, I will be happy to yield to the gentleman from Alabama if he will answer a question concerning a matter which is disturbing me. Section 9 of this amendment provides that the district courts are given jurisdiction to enjoin or set aside any order suspending any priority or allocation. It would strike me in the situation described by our friend, the gentleman from Missouri [Mr. COCHRAN] that language might be broad enough to cover appeals to court of the industries involved. I certainly would hate to see all of these plants tying up the allocation of vital materials by appeals to judges who, although they undoubtedly are very learned lawyers, nevertheless, are not military men, nor industrial men, and therefore would not have the expert knowledge to make decisions concerning the waging of war.

Mr. HOBBS. Of course you would, sir, and so would we. I have tried in my remarks, to make clear that proposed section 9 would apply to only one, and that the smallest, of the three classes of so-called appeals. There are thousands upon thousands of the other two classes to one of this class. This amendment deals solely with suspension orders; what they are pleased to call sanctions or punishment; with reference to which we say, that when the accusing finger is pointed at anyone charging expressly, or by implication, that our war effort is being hurt by misappropriating war material, then the accused should have the right to his day in court so that the accuser may not be also the only judge. Such a court review would vindicate the accused only if innocent, not if guilty of using aluminum allocated for airplanes for making juke boxes.

Mr. WRIGHT. The language is rather broad. I hope it will be construed as the gentleman says it will be.

Mr. HOBBS. Mr. Chairman, the language is all right. Of course, the vice in this amendment offered by my friend, the gentleman from Iowa [Mr. GWYNNE] is that he has a joker in it which says sanctions to be imposed must be specifically authorized by law or delegation, when he knows that all the powers in the Second War Powers Act are conveyed in four or five lines and there is no specific authorization of any such thing.

Mr. MAY. Mr. Chairman, will the gentleman from Pennsylvania yield to allow me to propound a question to the gentleman from Alabama [Mr. HOBBS]?

Mr. WRIGHT. I yield.

Mr. MAY. I wish the gentleman from Alabama would, if he can, explain just exactly the material difference in the amendment which the committee brings in here to title 3 of the Second War Powers Act. In what respect is it a change from the original act?

Mr. HOBBS. There was not anything like that in the original act at all.

Mr. MAY. There was no right to go to the courts at all?

Mr. HOBBS. There was no right to go to the courts at all given in the act.

Mr. SUMNERS of Texas. It was a substantive right.

Mr. HOBBS. However, there was nothing in the act at all, although it is a matter of substantive law.

Mr. FOLGER. Mr. Chairman, I offer an amendment to the committee amendment which I send to the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. FOLGER: On page 2, line 15, after the word "authority" strike out the period and insert a semicolon and add the following: "unless such order of suspension as to priority grant or allocations is the result of a determined general requirement to the effective prosecution of the war."

Mr. FOLGER. Mr. Chairman, it is mighty hard for me to go along with this amendment at all, and it is likewise difficult for me to go against it. I refer to the main committee amendment. I think any legislation of this kind at this critical period of the war is exceedingly dangerous. With great respect I suggest that it is not timely. There is no use to predict or undertake to prophesy how long this war will last, either in Germany or Japan.

I am convinced that, while we think just as much as we can think of the citizen's private rights, the greatest privilege and guaranty he has that those rights will be substantially maintained after the war is over is our disposition to try to take care of the public welfare, in view of the fact that we are in the midst of a war.

The gentleman from Missouri [Mr. COCHRAN], with whose ideas I am in very definite accord, asked the question why something is not put in here to guarantee that this will not interfere with the war effort. The amendment which I am proposing gives this authority of law as contained in the committee amendment, unless such order of suspension as to prior grants or allocations is the result of a determined general requirement to the effectual prosecution of the war, in which event such proceeding would have to yield to the requirements found, that it would be too dangerous to stop and take 5 days and then 10 days, and then 3 months, and perhaps 6 months or a year to settle this whole matter as to the individual right of some man to continue to have certain allocations of materials that he does not want to surrender. I am not suggesting any particular person. I have nobody in mind, but any person could be so obstinate as to carry it to the Supreme Court of the United States while the war is on, with Eisenhower and MacArthur calling for the munitions and planes and guns, which require this very material that we have got suspended between heaven and earth, to protect some private right.

Mr. MAY. Will the gentleman yield?

Mr. FOLGER. I yield.

Mr. MAY. Does not the gentleman think that in view of the fact that the original act made no provision for application to the courts, and that this does provide for injunctive proceedings in the courts, the courts would construe it as the intent of Congress to delay these things from time to time?

Mr. FOLGER. My answer to that is, it is the intent of Congress if it is adopted. We are all in sympathy with the idea that gave rise to the proposal of this amendment to the Second War Powers Act, but we must go back and say that you cannot do that if it is predetermined that the suspension is a general requirement to the prosecution of the war.

Mr. WALTER. Will the gentleman yield?

Mr. FOLGER. I yield.

Mr. WALTER. I would like to call the gentleman's attention to the fact that in the type of case he just described, the agency could go into court and secure an injunction against the citizen who is doing the things that the gentleman said might be done.

Mr. FOLGER. With all the rights of appeal and different procedures that would be necessary and the time that might be required for final determination, with the differences of opinion of many men as to what ought to be done and what ought not to be done, this safeguard to protect our war program should be provided. I think we are not through with the war. I just think they are fighting over in Germany today. I just think they have got 27 men in this country trying to impress upon our people that we are in danger because we do not have the implements of war with which to fight—the danger of prolonging the war.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. FOLGER] has expired.

All time has expired.

Mr. COCHRAN. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. COCHRAN. Am I correct that the first vote will come on the amendment offered by the gentleman from Iowa [Mr. GWYNNE]?

The CHAIRMAN. The first vote will come on the amendment offered by the gentleman from North Carolina to the committee amendment.

Mr. COCHRAN. And then following that will be the vote on the amendment offered by the gentleman from Iowa?

The CHAIRMAN. That is the situation.

Mr. COCHRAN. And if that is defeated then the vote comes on the committee amendment.

Mr. THOMASON. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The time for debate was fixed by unanimous consent on the committee amendment and all amendments thereto. The time agreed upon has expired.

Mr. THOMASON. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. THOMASON. Do I understand that all debate is concluded now on the committee amendment as well as the amendments thereto?

The CHAIRMAN. Yes.

Mr. THOMASON. And there may be no further debate on any section of the bill?

The CHAIRMAN. Only by unanimous consent. The request was that the debate on the pending amendment and all amendments thereto be limited to 7 minutes.

The question is on the amendment offered by the gentleman from North Carolina.

The question was taken; and on a division (demanded by Mr. FOLGER) there were—ayes 7, noes 95.

So the amendment was rejected.

The CHAIRMAN. The question recurs on the substitute offered by the gentleman from Iowa to the pending committee amendment.

The question was taken; and on a division (demanded by Mr. GWYNNE) there were—ayes 49, noes 57.

So the substitute was rejected.

The CHAIRMAN. The question recurs on the committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. Under the rules, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. CLARK, Chairman of the Committee of the Whole House on the state of the Union, reported that that Committee having had under consideration the bill (H. R. 4993) to amend Public, No. 507, Seventy-seventh Congress, second session, an act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942, pursuant to House Resolution 660, he reported the same back to the House with sundry amendments adopted in the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them in gross.

The amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND REMARKS

Mr. HOBBS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

PERMISSION TO ADDRESS THE HOUSE

Mr. MICHENER. Mr. Speaker, I ask unanimous consent that on tomorrow after disposition of business on the Speaker's desk and at the conclusion of any special orders heretofore entered, the gentleman from Massachusetts [Mr. WIGGLESWORTH] may address the House for 30 minutes.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

MEETING OF COMMITTEE ON INDIAN AFFAIRS

Mr. MUNDT. Mr. Speaker, on Monday next at 10 o'clock the Special Com-

mittee on Indian Affairs will begin hearings in its committee room. I ask unanimous consent to extend my remarks in the RECORD and to include an announcement of that fact, together with copy of a letter sent to Commissioner Collier.

The SPEAKER. Is there objection to the request of the gentleman from South Dakota [Mr. MUNDT]?

There was no objection.

[The matter referred to appears in the Appendix.]

PERMISSION TO ADDRESS THE HOUSE

Mr. GILCHRIST. Mr. Speaker, I ask unanimous consent to address the House in order to make an announcement.

The SPEAKER. Is there objection to the request of the gentleman from Iowa [Mr. GILCHRIST]?

There was no objection.

THE LATE EDWARD C. EICHER

Mr. GILCHRIST. Mr. Speaker, the noon papers today carry news of the sudden death of Justice Edward C. Eicher, of Iowa, in his sleep during the night at his home in Alexandria.

Mr. Eicher was a Member of the Seventy-third, Seventy-fourth, and Seventy-fifth Congresses. During his membership in Congress he was very active in many things but especially so in getting the approval of the Congress to and securing the passage of what is known as the death-penalty clause for certain utility holding corporations. This gave him fame and public recognition throughout the whole country. Upon his leaving the Congress he was appointed a member of the Securities and Exchange Commission, after which he was appointed as a justice of the Federal District Court here in the District of Columbia.

Justice Eicher was presently engaged in presiding at the trial of the so-called sedition case that has been going on for several months. I knew him and served with him in Congress as many of you did. There has not been a case in the history of this country, that I can recall, which has been so difficult to preside over as that particular case to which I just referred. He was at his post and in court yesterday and he died like a soldier on the field, doing his duty and rendering his service in presiding over this particularly difficult case.

I understand at the start of this trial there were about 59 lawyers engaged in defending the case and, as I read the account of it in the newspapers, they all seemed to be trying to make trouble and to find fault with the presiding judge and to see if they could inject into the case some prejudicial error upon which an appeal might be founded. Edward Eicher sat there and presided over that trial and preserved order and judicial decorum as best he could for months and months. He was a man whom we all loved, a man who did his duty as he saw it, a man who did not have what the doctors call the hygiene of repose. He was an indefatigable worker and always active while a Member of this body, and he was the advocate and author of much worth-while legislation. He did his duty in helping to enact into law measures of great and lasting value to the country. He was given acclaim for

having done so. The country this morning has lost a great jurist, a great man, and a great legislator in the person of Edward Eicher, of Iowa. But first of all he was a great friend and we all regret his passing.

(Mr. GILCHRIST asked and was given permission to revise and extend his remarks.)

EXTENSION OF REMARKS

Mr. GILLIE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include a resolution as well as an editorial from the Fort Wayne News-Sentinel.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

[The matter referred to appears in the Appendix.]

AMENDMENT OF SELECTIVE TRAINING AND SERVICE ACT OF 1940

Mr. MAY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 5386) to amend the Selective Training and Service Act of 1940, as amended, to extend the time within which application may be made for reemployment, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

After line 11, insert:

"Sec. 2. Section 3 (b) of Public Resolution 96 of the Seventy-sixth Congress (U. S. C., 1940 ed. Supp. III, title 50, App., secs. 401; 54 Stat. 858), as amended, authorizing the President to order members and units of reserve components and retired personnel of the Regular Army into active military service, is further amended by striking out the word 'forty' therefrom and substituting the word 'ninety' therefor and by adding after the words 'relieved from such active duty or service' the following: 'or from hospitalization continuing after discharge for a period of not more than 1 year.'"

After line 11, insert:

"Sec. 3. Section 7 of Public Law 213 of the Seventy-seventh Congress (U. S. C., 1940 ed. Supp. III, title 50, App., sec. 357; 55 Stat. 627), the Service Extension Act of 1941, is hereby amended by inserting 'as amended,' after the words 'Selective Training and Service Act of 1940.'"

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

Mr. MARTIN of Massachusetts. Mr. Speaker, reserving the right to objection, I understand these amendments are merely expanding the legislation and taking in other groups that should be included.

Mr. MAY. That is exactly right.

Mr. MARTIN of Massachusetts. For the benefit of the House, will the gentleman explain the amendments?

Mr. MAY. What happened was this: H. R. 5386 was passed by unanimous consent without hearings, and it went to the Senate, but did not contain any reference to the National Guard or those who were taken in under the Selective Training and Service Act after it was extended. The bill as amended by the Senate takes care of not only those who



78TH CONGRESS
2D SESSION

H. R. 4993

IN THE SENATE OF THE UNITED STATES

DECEMBER 1 (legislative day, NOVEMBER 21), 1944

Read twice and referred to the Committee on the Judiciary

AN ACT

To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title XV, section 1501, of the Second War Powers
4 Act, 1942, approved March 27, 1942, is amended to read
5 as follows:

6 “SEC. 1501. Titles I to VII, inclusive, and titles IX,
7 XI, and XIV of this Act, and the amendments to existing
8 law made by any such title, shall remain in force only until
9 December 31, 1945, or until such earlier time as the two

1 Houses of Congress by concurrent resolution, or the Presi-
2 dent, may designate, and after such amendments cease to be
3 in force any provision of law amended thereby shall be in
4 full force and effect as though this Act had not been enacted;
5 but no court proceeding brought under any such title shall
6 abate by reason of the termination hereunder of such title.”

7 Title III of the Second War Powers Act, 1942, is
8 hereby amended by adding at the end thereof the following:

9 “(9) The district courts of the United States are hereby
10 given exclusive jurisdiction to enjoin or set aside, in whole
11 or in part, any order suspending any priority or allocation,
12 or denying a stay of any such suspension, that may have
13 been issued by any person, officer, or agency, acting or pur-
14 purting to act hereunder, or under any other law or authority.

15 “Any action to enjoin or set aside any such order shall
16 be brought within five days after the service thereof.

17 “No suspension order shall take effect within five days
18 after it has been served, or, if an application for a stay
19 is made to the issuing authority within such five-day period,
20 until the expiration of five days after service of an order
21 denying the stay.

22 “The venue of any such suit shall be in the district court
23 of the United States for the district in which the petitioner
24 has his principal place of business; and the respondent shall
25 be subject to the jurisdiction of such court after ten days

1 before the return day of the writ, either when (1) process
2 shall have been served on any district manager or other agent
3 of the respondent of similar or superior status; or (2) notice
4 by registered mail shall have been given to respondent, or
5 to the office of the Attorney General of the United States.”

Passed the House of Representatives November 30, 1944.

Attest:

SOUTH TRIMBLE,

Clerk.

AN ACT

To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

DECEMBER 1 (legislative day, NOVEMBER 21), 1944
Read twice and referred to the Committee on the
Judiciary

EXTENDING THE SECOND WAR POWERS ACT

DECEMBER 4 (legislative day, NOVEMBER 21), 1944.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4993]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4993) to amend Public, No. 507, Seventy-seventh Congress, second session, an act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942, having considered the same, do now report the bill to the Senate favorably, without amendment, and recommend that the bill do pass.

STATEMENT

This bill would amend the Second War Powers Act (act approved March 27, 1942, Public Law No. 507, 77th Cong., 56 Stat. 176) in two respects, as follows:

1. Extends the life of titles I to VII, inclusive, and of titles IX, XI, and XIV of the Second War Powers Act, and the amendment to any existing law made by any such title, from December 31, 1944, to December 31, 1945, subject to earlier termination by concurrent resolution of the two Houses of Congress, or by order of the President.

2. Adds a new section (9) to title III of the Second War Powers Act, which section (9) follows:

(9) The district courts of the United States are hereby given exclusive jurisdiction to enjoin, or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer or agency, acting or purporting to act hereunder, or under any other law or authority.

Any action to enjoin or set aside any such order shall be brought within five days after the service thereof.

No suspension order shall take effect within five days after it has been served, or, if an application for a stay is made to the issuing authority within such five-day period, until the expiration of five days after service of an order denying the stay.

The venue of any such suit shall be in the district court of the United States for the district in which the petitioner has his principal place of business; and the respondent shall be subject to the jurisdiction of such court after ten days before

the return day of the writ, either when (1) process shall have been served on any district manager or other agent of the respondent of similar or superior status; or (2) notice by registered mail shall have been given to respondent, or to the office of the Attorney General of the United States.

This amendment gives the district courts of the United States exclusive jurisdiction to enjoin or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer, or agency acting or purporting to act under that title, or under any other law or authority; fixes the time limit within which any such action must be brought; and fixes the venue of any such suit both as to petitioner and respondent, as well as the *modus operandi* to render the respondent subject to the jurisdiction of the district court issuing the writ of injunction.

The purpose of this amendment is to assure any holder of a priority or allocation granted by any person, officer, or agency, under title III, or under any other law or authority, whenever the same may have been ordered suspended by the issuing authority the right to invoke the aid of the United States district court for the district in which the petitioner has his principal place of business, to enjoin any such suspension order, and to give that district court jurisdiction both of the subject matter and of the issuing authority.

The amendment applies only to "suspension orders," which are orders withholding or withdrawing priorities or allocations because of violations of the regulations or orders of the agency issuing the suspension order. It is not intended to and does not apply to allocation or priority orders or decisions made by the agency nor to cases where such allocations or priorities must be modified or revoked because of changing supply conditions or changes in war or essential civilian needs. Also the amendment does not affect the provision for judicial review of suspension orders contained in the Stabilization Extension Act of 1944 with respect to the Office of Price Administration suspension orders. Thus, the provision in that Act, conditioning interlocutory relief upon the entry of an order enjoining the applicant for violations pending review, remains in effect as to suspension orders issued by the Office of Price Administration.

CHANGES IN EXISTING LAW

Changes in existing law made by the bill are shown as follows (existing law in which no change is proposed is shown in roman, new matter is printed in *italic*, and existing law proposed to be omitted is enclosed in black brackets):

Title III of the Second War Powers Act is amended to read as follows:

TITLE III—PRIORITIES POWERS

SEC. 301. Subsection (a) of section 2 of the Act of June 28, 1940 (54 Stat. 676), entitled "An Act to expedite national defense, and for other purposes," as amended by the Act of May 31, 1941 (Public Law Numbered 89, Seventy-seventh Congress), is hereby amended to read as follows:

"SEC. 2. (a) (1) That whenever deemed by the President of the United States to be in the best interests of the national defense during the national emergency declared by the President on September 8, 1939, to exist, the Secretary of the Navy is hereby authorized to negotiate contracts for the acquisition, construction, repair, or alteration of complete naval vessels or aircraft, or any portion thereof, including plans, spare parts, and equipment therefor, that have been or

may be authorized, and also for machine tools and other similar equipment, with or without advertising or competitive bidding upon determination that the price is fair and reasonable. Deliveries of material under all orders placed pursuant to the authority of this paragraph and all other naval contracts or orders and deliveries of material under all Army contracts or orders shall, in the discretion of the President, take priority over all deliveries for private account or for export: *Provided*, That the Secretary of the Navy shall report every three months to the Congress the contracts entered into under the authority of this paragraph: *Provided further*, That contracts negotiated pursuant to the provisions of this paragraph shall not be deemed to be contracts for the purchase of such materials, supplies, articles, or equipment as may usually be bought in the open market within the meaning of section 9 of the Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (49 Stat. 2036; U. S. C., Supp. V, title 41, secs. 35-45): *Provided further*, That nothing herein contained shall relieve a bidder or contractor of the obligation to furnish the bonds under the requirements of the Act of August 24, 1935 (49 Stat. 793; 40 U. S. C. 270 (a) to (d)): *Provided further*, That the cost-plus-a-percentage-of-cost system of contracting shall not be used under the authority granted by this paragraph to negotiate contracts; but this proviso shall not be construed to prohibit the use of the cost-plus-a-fixed-fee form of contract when such use is deemed necessary by the Secretary of the Navy: *And provided further*, That the fixed fee to be paid the contractor as a result of any contract entered into under the authority of this paragraph, or any War Department contract entered into in the form of cost-plus-a-fixed-fee, shall not exceed 7 per centum of the estimated cost of the contract (exclusive of the fee as determined by the Secretary of the Navy or the Secretary of War, as the case may be).

"(2) Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—

"(A) Contracts or orders for the government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled 'An Act to promote the defense of the United States':

"(B) Contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States;

"(C) Subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this subsection (a).

Deliveries under any contract or order specified in this subsection (a) may be assigned priority over deliveries under any other contract or order; and the President may require acceptance of and performance under such contracts or orders in preference to other contracts or orders for the purpose of assuring such priority. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

"(3) The President shall be entitled to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, any person (which, for the purpose of this subsection (a), shall include any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not), and make such investigations as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this subsection (a).

"(4) For the purpose of obtaining any information, verifying any report required, or making any investigation pursuant to paragraph (3), the President may administer oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the

jurisdiction of the United States: *Provided*, That the production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person resides or transacts business, if, prior to the return date specified in the subpoena issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpoena, or in any action or proceeding which may be instituted under this subsection (a), on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The President shall not publish or disclose any information obtained under this paragraph which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the President determines that the withholding thereof is contrary to the interest of the national defense and security; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding \$1,000, or be imprisoned not exceeding two years, or both.

"(5) Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

"(6) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States and the courts of the Philippine Islands shall have jurisdiction of violations of this subsection (a) or any rule, regulation, or order or subpoena thereunder, whether heretofore or hereafter issued, and of all civil actions under this subsection (a) to enforce any liability or duty created by, or to enjoin any violation of, this subsection (a) or any rule, regulation, order, or subpoena thereunder whether heretofore or hereafter issued. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; and subpoena for witnesses who are required to attend a court in any district in any such case may run into any other district. No costs shall be assessed against the United States in any proceeding under this subsection (a).

"(7) No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

"(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe."

"(9) *The District Courts of the United States are hereby given exclusive jurisdiction to enjoin, or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer, or agency, acting or purporting to act hereunder, or under any other law or authority.*

"Any action to enjoin or set aside any such order shall be brought within five days after the service thereof."

"No suspension order shall take effect within five days after it has been served, or, if an application for a stay is made to the issuing authority within such five-day period, until the expiration of five days after service of an order denying the stay.

"The venue of any such suit shall be in the District Court of the United States for the District in which the petitioner has his principal place of business; and the respondent shall be subject to the jurisdiction of such Court after ten days before the return day of the writ, either when (1) process shall have been served on any District Manager or other agent of the respondent of similar or superior status; or (2) notice by registered mail shall have been given to respondent, or to the office of the Attorney General of the United States."

Title XV of the Second War Powers Act is amended to read as follows:

TITLE XV—TIME LIMIT AND SHORT TITLE

SEC. 1501. Titles I to **[IX]** VII, inclusive, and titles IX, XI and XIV of this Act, and the amendments to existing law by any such title, shall remain in force only until December 31, **[1944]** 1945, or until such earlier time as the *two Houses of Congress* by concurrent resolution, or the President, may designate, and after such amendments cease to be in force any provision of law amended thereby shall be in full force and effect as though this Act had not been enacted; but no court proceeding brought under any such title shall abate by reason of the termination hereunder of such title.





Calendar No. 1320

78TH CONGRESS
2D SESSION

H. R. 4993

[Report No. 1301]

IN THE SENATE OF THE UNITED STATES

DECEMBER 1 (legislative day, NOVEMBER 21), 1944

Read twice and referred to the Committee on the Judiciary

DECEMBER 4 (legislative day, NOVEMBER 21), 1944

Reported by Mr. HATCH, without amendment

AN ACT

To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title XV, section 1501, of the Second War Powers
4 Act, 1942, approved March 27, 1942, is amended to read
5 as follows:

6 “SEC. 1501. Titles I to VII, inclusive, and titles IX,
7 XI, and XIV of this Act, and the amendments to existing
8 law made by any such title, shall remain in force only until
9 December 31, 1945, or until such earlier time as the two

1 Houses of Congress by concurrent resolution, or the Presi-
2 dent, may designate, and after such amendments cease to be
3 in force any provision of law amended thereby shall be in
4 full force and effect as though this Act had not been enacted;
5 but no court proceeding brought under any such title shall
6 abate by reason of the termination hereunder of such title.”

7 Title III of the Second War Powers Act, 1942, is
8 hereby amended by adding at the end thereof the following:

9 “(9) The district courts of the United States are hereby
10 given exclusive jurisdiction to enjoin or set aside, in whole
11 or in part, any order suspending any priority or allocation,
12 or denying a stay of any such suspension, that may have
13 been issued by any person, officer, or agency, acting or pur-
14 porting to act hereunder, or under any other law or authority.

15 “Any action to enjoin or set aside any such order shall
16 be brought within five days after the service thereof.

17 “No suspension order shall take effect within five days
18 after it has been served, or, if an application for a stay
19 is made to the issuing authority within such five-day period,
20 until the expiration of five days after service of an order
21 denying the stay.

22 “The venue of any such suit shall be in the district court
23 of the United States for the district in which the petitioner
24 has his principal place of business; and the respondent shall
25 be subject to the jurisdiction of such court after ten days

1 before the return day of the writ, either when (1) process
2 shall have been served on any district manager or other agent
3 of the respondent of similar or superior status; or (2) notice
4 by registered mail shall have been given to respondent, or
5 to the office of the Attorney General of the United States.”

Passed the House of Representatives November 30, 1944.

Attest:

SOUTH TRIMBLE,

Clerk.

AN ACT

To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

DECEMBER 1 (legislative day, November 21), 1944
Read twice and referred to the Committee on the
Judiciary

DECEMBER 4 (legislative day, November 21), 1944
Reported without amendment

OFFICE OF BUDGET AND FINANCE
Legislative Reports and Service Section

78th-2nd, No. 172

DIGEST OF PROCEEDINGS OF CONGRESS OF INTEREST TO THE DEPARTMENT OF AGRICULTURE
(Issued December 9, 1944, for actions of Friday, December 8, 1944)

(For staff of the Department only)

CONTENTS

Adjournment.....	7,15	Imports.....	9	Small business.....	17,18
Appropriations.....	1	Labor, farm.....	1	Social security.....	13
Banking and currency....	3	Loans, farm.....	8	Statistics.....	1
Bureaucracy.....	2	Personnel.....	4	Tariffs.....	9
Consumer studies.....	1	Rivers and harbors bill.	12	Tobacco.....	1
Flood control.....	5	Rural telephones.....	16	Transportation.....	12
Forestry.....	2	St. Lawrence Waterway.	10,12	War powers.....	11
Garnishment.....	14				

HOUSE

1. FIRST SUPPLEMENTAL APPROPRIATION BILL, 1945. Passed with amendments this bill, H. R. 5587 (pp. 9200-14). (For provisions see Digests 169a-172.)
Rejected, 48-109, Rep. Tarver's (Ga.) amendment to restore the item but to make it available until June 30, 1946 (pp. 9200-2).
On Dec. 7 and 8 the consumer-study and certain other statistical items for Commerce and Labor, as well as Agriculture, were stricken on points of order.
Rep. Cannon, Mo., and O'Connor, Mont., discussed the farm-labor placement problem (pp. 9206-9). Rep. Flannagan, Va., discussed the tobacco shortage and inserted tables showing tobacco statistics (pp. 9209-11).
2. FORESTRY. Began debate on H. R. 2241, to abolish the Jackson Hole National Monument and to restore the area to its status as part of the Teton National Forest (pp. 9219-31).
Rep. Dirksen, Ill., criticized "the persistency of bureaucracy in gaining its ends" (p. 9222).
Rep. Murdock, Ariz., urged that national monuments, like national forests, be established only by act of Congress (pp. 9229-30).
Rep. White, Idaho, criticized the "restrictions" placed upon travelers in national forests (pp. 9230-1).
3. BANKING AND CURRENCY. Passed without amendment S. 1954, to extend until Dec. 31, 1945, the act authorizing the use for war purposes of Government-owned silver (pp. 9198-9). This bill will now be sent to the President.
4. PERSONNEL. Both Houses received Civil Service Commission's consolidated report and supporting data covering especially meritorious salary increases made by the several Government departments and agencies during the fiscal year 1944. To Civil Service Committees. (pp. 9158, 9232.)
5. FLOOD CONTROL. Received War Department's flood-control report on Farm Creek, Ill. (H. Doc. 302). To Flood Control Committee (p. 9232.)

6. COTTON SUBSIDIES. Received a San Francisco C of C resolution favoring H. R. 4616, to prohibit certain subsidy, indemnity, and other payments with respect to short staple cotton and commodities manufactured from such cotton (p. 9232).
7. ADJOURNED until Mon., Dec. 11 (p. 9231). Legislative program as announced by Majority Leader McCormack: Mon., Consent-Calendar; followed by S. 919, to expedite the payment for lands acquired during the war; the Maloney-Monroney congressional reorganization resolutions; and conference reports as they come in (pp. 9225-6).

SENATE

8. FARM LOANS. Sen. Langer, N. Dak., discussed his bill S. 2086, providing for Federal land bank loans in States having laws prohibiting deficiency judgments (pp. 9159-63).
9. TARIFFS. Passed as reported S. Res. 341, asking the Tariff Commission for information concerning certain products and the ratio of imports in relation thereto (p. 9163-4).
10. ST. LAWRENCE WATERWAY. Sen. Capper, Kans., inserted a National Grange letter favoring this project (p. 9158).
11. WAR POWERS. Passed without amendment H. R. 4993, to extend the Second War Powers Act (pp. 9190-2). (For provisions of the bill see Digest 165.) This bill will now be sent to the President.
12. RIVERS AND HARBORS BILL. Continued debate on this bill, H. R. 3961 (pp. 9164-77). During the debate Sen. LaFollette, Wis., discussed the advantages of the proposed St. Lawrence waterway (pp. 9164-72). Sen. Reed, Kans., spoke against the development of the Missouri River for navigation as means of regulating rail freight rates (pp. 9172-7).
13. SOCIAL-SECURITY TAXES. Passed without amendment H. R. 5564, to continue present social-security tax rate during 1945 (pp. 9177-90). This bill will now be sent to the President.
14. GARNISHMENT, ETC. Passed without amendment H. R. 2116, amending D. C. laws relating to exemption of property from judicial proceedings, assignment of salary or wages, and advance payment of salary or wages to avoid attachment or garnishment (p. 9192).
15. ADJOURNED until Mon., Dec. 11 (p. 9197).

BILLS INTRODUCED

16. RURAL TELEPHONES. By Sen. Hill, Ala., S. 2213, a bill to provide for rural telephones and for other purposes. To Agriculture and Forestry Committee. (p. 9159.)
17. SMALL BUSINESS. By Sen. Murray, Mont., S. Res. 349, providing for the continuation of authority to study and survey problems of small business enterprises. To Audit and Control Committee. (p. 9159.)

tually contemplated by the present law, and that a Government subsidy to make up the difference would be needed. But this would be in line with practically all old-age-security systems in other countries. Moreover, as we have in effect adopted a pay-as-you-go system with a contingency reserve, a subsidy to the system would merely mean that another kind of tax would be substituted for a high pay-roll tax—

That is precisely the example I gave to the Senator from Minnesota—

Subsidies to the system of a reasonable amount are nothing to become alarmed about. The chief danger to the system is an unwise increase in the benefit formula which would make the total tax burden excessive. An extension of the coverage of the old-age and survivors insurance system to include other groups of workers would prevent the injustice to these workers that might otherwise come through contributing to benefits in which they do not share.

Eighth, and finally, Mr. Linton says:

8. The old-age and survivors insurance tax rate should be held at this time to 1 percent on the employer and 1 percent on the employee, but a comprehensive expert study of the whole financing system should be immediately undertaken.

Mr. President, I conclude with just this word: I think the case for the maintenance of the 1-percent rate during 1945 is absolutely clear on the basis of the record, on the basis of the law, on the basis of the Morgenthau rule. I freely concede, however, that it is all wrong for this subject to have to come to the floor of Congress every year for shotgun judgment by those of us who cannot possibly have the expert knowledge which is essential to a comprehension of this totally technical problem.

In the bill I introduced in the Senate on this subject there was a second section in which I propose to instruct the Joint Congressional Committee on Internal Revenue Taxation to investigate during the next year, with the aid of an advisory council of experts, the question of what permanent pay-roll-tax provision should be written into the statute. The House omitted that section of the proposal, although it promised, unofficially, that the Ways and Means Committee of the House would give it subsequent attention.

I totally agree that we have to find some way out of this annual controversy on the floor of Congress so that there can be a stable consistency over a long-range plan at the base of the old-age and survivors insurance section of the social security law.

I give notice that the first thing in the new Congress I shall introduce a joint resolution seeking not only to instruct the Joint Congressional Committee on Internal Revenue Taxation to investigate and explore this subject itself but also to create another advisory council of experts on the subject, and providing that their studies shall include not only the appropriate tax rate contemplatively involved but also the expansion of coverage and the expansion of benefits under the old-age section of the social security law, so that 12 months from today we may have a concrete, well-justified, wholly sustained program for expanding coverage, and for expanding benefits, in

those sections of the law which are at present inequitable, and for permanently financing the entire enterprise.

Mr. President, particularly in view of the fact that in 1945, it is obvious, the entire structure of the Social Security Act is to be rewritten, I submit, finally, that it is the year of years when we should maintain the existing tax rate, and wait for developments to determine what the tax rate of the future shall be.

I submit that the bill which was passed so overwhelmingly by the House should be equally overwhelmingly endorsed by the Senate.

Mr. CHANDLER. Mr. President, will the Senator yield before he takes his seat?

Mr. VANDENBERG. I yield.

Mr. CHANDLER. I think the Senator made it quite clear, but I wish to emphasize this one point, that even if the tax were raised, the beneficiaries under this section of the bill would not get any additional benefits next year.

Mr. VANDENBERG. The Senator is entirely accurate.

Mr. CHANDLER. I do not want anyone to say that if I vote for 1 percent I deny anyone benefits he would have gotten if I had voted for 2 percent.

Mr. VANDENBERG. It is perfectly amazing how that situation has been misrepresented. The Senator is absolutely correct. The benefits are frozen in the law. The benefits will be the same no matter what may be paid next year by the workers of the Nation.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. VANDENBERG. I yield.

Mr. WHEELER. There is one question which I think possibly the Senator covered, but I did not quite catch his explanation. Suppose, as the Senator from New York has said, there should be great unemployment following the war. How is that to be taken care of? Will there be enough money in the Treasury funds to take care of that, or will we have to raise the amount necessary at that time? How is that to be worked out?

Mr. VANDENBERG. The Senator understands, in the first place, that this has absolutely no relationship to unemployment-benefit payments. It applies solely to old-age pensions.

Mr. WHEELER. I understood the Senator was talking about unemployment.

Mr. VANDENBERG. That is what the Senator from New York was talking about, but I stated a little while ago that that is one of the points which seems to me entirely irrelevant in connection with this discussion, because it is totally unrelated.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. VANDENBERG. I yield.

Mr. LUCAS. Following up the inquiry made by the Senator from Montana [Mr. WHEELER], I want to try to make it clear to my own mind and clear to the minds of other Senators that this reserve fund is definitely for one purpose, and that is for aged persons and their survivors, and nobody else.

Mr. VANDENBERG. That is all; and only for those who have already made the payments and created the contracts.

Mr. LUCAS. Yes, I understand. Now the only way that this reserve fund which the Senator is speaking of, which is so large, can be reached by any group of people, is through the Congress, I take it, increasing the benefit payments to the aged persons and their survivors.

Mr. VANDENBERG. The Senator is correct.

Mr. DANAHER. Mr. President, I want to congratulate those Senators who have found it possible to be present to listen to the splendid presentation just made by the Senator from Michigan. It was a noteworthy exposition of the problem which has confronted the Senate in connection with this legislation.

There was one remark, however, made by the Senator from Michigan, which interested me particularly, and that was his advice that at the opening of the next session of Congress he contemplates asking for a study of the Joint Staff. That bears, I might say, on his observation that there is no other way—and I think those are his words—no way to invest the proceeds of the old-age and survivors insurance trust fund other than in United States bonds. I think those were his exact words.

Mr. President, I think there may be another way, and I would not wish to have the possibility of another way overlooked at the time of that study. It is entirely possible that with a Government guaranty, the fund can be invested in the obligations of self-liquidating Government projects which will earn their way and pay their interest and carrying charges, and at the same time supply a very real public need, particularly if those obligations be issued only when private lending sources would not advance the capital.

There is a way, therefore, Mr. President, in which it might be decided this reserve can be put to work, and there are instances of it in various States. I will say to the Senator from Michigan, for example, that in the State of Connecticut, since 1795, there has been maintained intact the State school fund, all the proceeds of which were derived from the sale of the Western Reserve. A great part of the State of Ohio, whose junior Senator I see watching me at the moment, came from the property once known as the Connecticut or Western Reserve. When Connecticut sold that territory, Mr. President, there was set up a fund which annually has yielded great income and at the present time it yields a sum equal at least to \$2.25 per pupil for every child between the ages of 5 and 16 years, the enumerable school ages in the State of Connecticut. All down through the years those funds have been invested in mortgages in the State of Connecticut, which are given prior status even over taxes of municipalities. Thus the fund is wisely administered and fully protected.

There are many ways, Mr. President, in which this fund could in fact be conserved and still be put to work, but one in particular, to which I shall refer briefly, seems to me worthy of study. I have in mind that when it was contem-

plated by the Port of New York Authority that they build the Lincoln Tunnel there were no investment sources which would take the obligations of the Port of New York Authority for that purpose. The R. F. C. took the obligations. The R. F. C. found the project was self-liquidating, and when operations were undertaken and the tunnel was successful, there was no trouble whatever in selling the obligations.

So it seems to me, Mr. President, there might be self-liquidating Government projects and other worth-while developments which the Government planning experts might explore and their findings might be considered in the course of the study which the Senator from Michigan contemplates.

The ACTING PRESIDENT pro tempore. The bill is still before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading the bill.

The bill was ordered to a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read three times, the question is, Shall the bill pass?

Mr. VANDENBERG. I ask for the yeas and nays.

Mr. GUFFEY. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Aiken	Gillette	Murray
Austin	Guffey	O'Daniel
Bailey	Gurney	Overton
Ball	Hall	Radcliffe
Bilbo	Hatch	Reynolds
Brewster	Hayden	Robertson
Brooks	Hill	Russell
Burton	Holman	Shipstead
Bushfield	Jenner	Smith
Butler	Johnson, Calif.	Stewart
Byrd	Johnson, Colo.	Thomas, Okla.
Capper	Kilgore	Tunnell
Caraway	La Follette	Vandenberg
Chandler	Langer	Wagner
Connally	Lucas	Walsh
Cordon	McClellan	Weeks
Danaher	McFarland	Wheeler
Davis	McKellar	Wherry
Eliender	Maloney	White
Ferguson	Maybank	Wiley
George	Mead	Willis
Gerry	Millikin	Wilson

The ACTING PRESIDENT pro tempore. Sixty-six Senators have answered to their names. A quorum is present.

The yeas and nays have been demanded. Is the demand sufficiently seconded?

The yeas and nays were ordered, and the legislative clerk proceeded to call the roll.

Mr. HILL (when Mr. BANKHEAD's name was called). My colleague the senior Senator from Alabama [Mr. BANKHEAD] and the senior Senator from Missouri [Mr. CLARK] are necessarily absent. The Senator from Alabama and the Senator from Missouri are paired on this question. I am advised that if present and voting the Senator from Missouri would vote "yea" and the Senator from Alabama would vote "nay."

Mr. WHERRY (when Mr. REVERCOMB's name was called). The junior Senator from West Virginia is necessarily absent. I am informed that if he were

present and voting he would vote "yea." The roll call was concluded.

Mr. HILL. I further announce that the Senator from Virginia [Mr. GLASS] is absent from the Senate because of illness.

The Senator from Florida [Mr. PEPPER] is absent on important public business.

The Senator from Nevada [Mr. McCARRAN] and the Senator from Utah [Mr. MURDOCK] are detained on official business for the Senate.

The Senator from Kentucky [Mr. BARKLEY] and the Senator from New Mexico [Mr. CHAVEZ] are unavoidably detained.

The Senator from Florida [Mr. ANDREWS], the Senator from California [Mr. DOWNEY], the Senator from Mississippi [Mr. EASTLAND], the Senator from Idaho [Mr. CLARK], the Senator from Rhode Island [Mr. GREEN], the Senator from Nevada [Mr. SCRUGHAM], the Senator from Utah [Mr. THOMAS], the Senator from Missouri [Mr. TRUMAN] the Senator from Wyoming [Mr. O'MAHONEY], the Senator from Maryland [Mr. TYDINGS], and the Senator from Washington [Mr. WALLGREN] are necessarily absent.

The Senator from Ohio [Mr. TAFT] is paired with the Senator from Kentucky [Mr. BARKLEY]; the Senator from Florida [Mr. ANDREWS] is paired with the Senator from Rhode Island [Mr. GREEN]; the Senator from New Hampshire [Mr. TOBEY] is paired with the Senator from Florida [Mr. PEPPER]; and the Senator from New Hampshire [Mr. BRIDGES] is paired with the Senator from Utah [Mr. THOMAS]. I am advised that if present and voting, the Senator from Ohio [Mr. TAFT], the Senator from Florida [Mr. ANDREWS], and the Senators from New Hampshire [Mr. TOBEY and Mr. BRIDGES] would vote "yea." The Senator from Kentucky [Mr. BARKLEY], the Senator from Rhode Island [Mr. GREEN], the Senator from Florida [Mr. PEPPER], and the Senator from Utah [Mr. THOMAS] would vote "nay."

Mr. WAGNER. I have a general pair with the Senator from Kansas [Mr. REED]. I transfer that pair to the Senator from Nevada [Mr. SCRUGHAM]. I am not advised how either Senator would vote if present. I vote "nay."

Mr. WHERRY. The Senator from New Hampshire [Mr. BRIDGES] is paired with the Senator from Utah [Mr. THOMAS]. If present the Senator from New Hampshire would vote "yea," and the Senator from Utah would vote "nay."

The Senator from Ohio [Mr. TAFT] is paired with the Senator from Kentucky [Mr. BARKLEY]. If present the Senator from Ohio would vote "yea," and the Senator from Kentucky would vote "nay."

The Senator from New Hampshire [Mr. TOBEY] is paired on this question with the Senator from Florida [Mr. PEPPER]. If present the Senator from New Hampshire would vote "yea," and the Senator from Florida would vote "nay."

The Senator from Delaware [Mr. BUCK], the Senator from West Virginia [Mr. REVERCOMB], the Senator from New Jersey [Mr. HAWKES], and the Senator from Idaho [Mr. THOMAS] are neces-

sarily absent. These four Senators would vote "yea" if present.

The Senator from Oklahoma [Mr. MOORE], the Senator from North Dakota [Mr. NYE], and the Senator from Kansas [Mr. REED] are necessarily absent.

The result was announced—yeas 47, nays 19, as follows:

YEAS—47

Austin	Ferguson	Reynolds
Bailey	George	Robertson
Bilbo	Gerry	Shipstead
Brewster	Gillette	Smith
Brooks	Gurney	Thomas, Okla.
Burton	Hall	Tunnell
Bushfield	Holman	Vandenberg
Butler	Jenner	Walsh
Byrd	Johnson, Calif.	Weeks
Capper	Johnson, Colo.	Wheeler
Chandler	McClellan	Wherry
Connally	Maybank	White
Cordon	Millikin	Wiley
Danaher	O'Daniel	Willis
Davis	Overton	Wilson
Eliender	Radcliffe	

NAYS—19

Aiken	Kilgore	Mead
Ball	La Follette	Murray
Caraway	Langer	Russell
Guffey	Lucas	Stewart
Hatch	McFarland	Wagner
Hayden	McKellar	
Hill	Maloney	

NOT VOTING—29

Andrews	Glass	Revercomb
Bankhead	Green	Scrugham
Barkley	Hawkes	Taft
Bridges	McCarran	Thomas, Idaho
Buck	Moore	Thomas, Utah
Chavez	Murdock	Tobey
Clark, Idaho	Nye	Truman
Clark, Mo.	O'Mahoney	Tydings
Downey	Pepper	Wallgren
Eastland	Reed	

So the bill H. R. 5564 was passed.

Mr. HILL. Mr. President, I ask unanimous consent that the President of the Senate be authorized to sign the bill which has just been passed during the recess of the Senate.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

EXTENSION OF SECOND WAR POWERS ACT OF 1942

The ACTING PRESIDENT pro tempore. Under the unanimous-consent agreement, the next business is House bill 4993, which the Chair lays before the Senate.

The Senate proceeded to consider the bill (H. R. 4993) to amend Public, No. 507, Seventy-seventh Congress, second session, an act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

Mr. HATCH. Mr. President, I promise the Senate that I shall not engage in any extended remarks. I wish to say to Senators that they will never be called upon to vote on a more important bill than the one now before the Senate.

This measure extends the powers conferred by the Second War Powers Act. Under that act, Mr. President, all the vast productive machinery of this country has been regulated to produce the magnificent effort and contribution which industry has made to the war effort. Automatically the act expires on the 31st day of this month.

Yesterday, as he appeared before the Mead committee dealing with the national defense, I asked Mr. Krug, Chair-

man of the War Production Board, what would happen if this act should not be extended. He replied:

Senator, I was startled when you said the act expired on the 31st day of this month. I had not realized it. I can answer you by saying that if the powers conferred by this act are not extended the entire war effort will collapse.

I say, Mr. President, that there is no doubt as to the correctness of that statement. Of course, I told Mr. Krug, as I have told others, that there was no question about the Congress extending the powers conferred by that act, and that it would be done immediately.

The bill passed the House with an amendment, and it is that amendment with which I should deal, or ought to explain, if Senators are interested. If they are not, I am willing to have a vote at this time. The amendment adopted by the House would simply confer the right of judicial review in cases involving what are called suspension orders. On that point I am sure the Senator from Connecticut [Mr. DANAHER] wishes to make an observation. I yield to the Senator from Connecticut.

Mr. DANAHER. Mr. President, inviting the attention of the Senator from New Mexico to page 2, line 11, we find there the words "any order suspending any priority or allocation."

I point out that this amended section would give the district courts exclusive jurisdiction to enjoin or set aside certain orders which are described in the language which I have just quoted. Since that language was open to very real question as to the exact meaning of what jurisdiction the court would have, and how that jurisdiction would be exercised, I took the matter up with the Senator from New Mexico, in charge of the bill, to the end that we might establish, if necessary by colloquy, some legislative background as to the meaning of those words. It is my understanding that the words "any order suspending" really should should read "any suspension order affecting."

Mr. HATCH. Mr. President, let me say to the Senator that the words which he has just used, "any suspension order" are the words which I have always used.

Mr. DANAHER. And they are the correct words.

Mr. HATCH. That is the correct designation.

Mr. DANAHER. They define the powers which we are authorizing the district courts to exercise if and when some War Production Board commissioner or hearing authority issues a suspension order against a contractor who has violated a previous allocation or priority. Is that the Senator's understanding?

Mr. HATCH. The Senator from Connecticut has correctly stated the situation.

Mr. President, I think Senators understand the bill. I see no reason for prolonging the debate.

Mr. CONNALLY. Mr. President, I wish to ask the Senator from New Mexico whether it is the purpose to make the act terminate on the action of the President or by the adoption by Congress of a concurrent resolution?

Mr. HATCH. I can best answer the Senator from Texas by reading from the bill itself, which provides, first, that the Second War Powers Act "shall remain in force only until December 31, 1945"—an extension for 1 year—"or until such earlier time as the two Houses of Congress by concurrent resolution, or the President may designate."

Mr. CONNALLY. I wish to suggest to the Senator that, according to my mind, legally that is not effective. It is all right to provide that the act shall be terminable when the Congress passes a joint resolution, but Congress cannot by the adoption of a concurrent resolution repeal the act or keep it from continuing in effect.

I think the language should have read, "or until such earlier time as the two Houses of Congress may adopt a concurrent resolution."

Mr. HATCH. I think the Senator from Texas has a very good point there, but I do not think it is one which should be made the subject of an amendment.

Mr. CONNALLY. I shall not offer an amendment and I shall not press the point; but I wish to call the attention of the Senator to the fact that an act can be terminated upon the occurrence of any event, and in order to make this provision legal it is simply necessary to consider the adoption of a concurrent resolution as an event, not as an end, because an act cannot be repealed by a concurrent resolution of the Congress. We could condition it on the occurrence of any event, such as the fall of a star, or anything else.

Mr. HATCH. I understand.

Mr. DANAHER. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. DANAHER. In the report of the Committee on the Judiciary, commencing two-thirds of the way down the second page, we find the words "Changes in existing law." From that point, down through the remainder of the report, there is set forth "Title III—Priorities powers", together with changes as indicated on page 5. It seems to me, Mr. President, that that portion of the report need not be reprinted, and that no useful purpose would be served by having it set forth in the RECORD. But I think the Senator from New Mexico would be wise to include all of page 1 and all of page 2 of the report of the committee, down to the point I indicated.

Mr. HATCH. Mr. President, does the Senator mean to have that much of the report included as a part of the remarks appearing in the RECORD at this point?

Mr. DANAHER. Yes; I think it would be well to have it included as a part of the remarks.

Mr. HATCH. I shall be very glad to do so. Mr. President, I ask unanimous consent that that be done.

There being no objection, the portion of the report (No. 1301) was ordered to be printed in the RECORD, as follows:

The Committee on the Judiciary, to whom was referred the bill (H. R. 4993) to amend Public Law No. 507, Seventy-seventh Congress, second session, an act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers

Act, 1942, having considered the same, do now report the bill to the Senate favorably, without amendment, and recommend that the bill do pass.

STATEMENT

This bill would amend the Second War Powers Act (act approved March 27, 1942, Public Law No. 507, 77th Cong., 56 Stat. 176) in two respects, as follows:

1. Extends the life of titles I to VII, inclusive, and of titles IX, XI, and XIV of the Second War Powers Act, and the amendment to any existing law made by any such title, from December 31, 1944, to December 31, 1945, subject to earlier termination by concurrent resolution of the two Houses of Congress, or by order of the President.

2. Adds a new section (9) to title III of the Second War Powers Act, which section (9) follows:

"(9) The district courts of the United States are hereby given exclusive jurisdiction to enjoin, or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer or agency, acting or purporting to act hereunder, or under any other law or authority.

"Any action to enjoin or set aside any such order shall be brought within five days after the service thereof.

"No suspension order shall take effect within five days after it has been served, or, if an application for a stay is made to the issuing authority within such five-day period, until the expiration of five days after service of an order denying the stay.

"The venue of any such suit shall be in the district court of the United States for the district in which the petitioner has his principal place of business; and the respondent shall be subject to the jurisdiction of such court after ten days before the return day of the writ, either when (1) process shall have been served on any district manager or other agent of the respondent of similar or superior status; or (2) notice by registered mail shall have been given to respondent, or to the office of the Attorney General of the United States."

This amendment gives the district courts of the United States exclusive jurisdiction to enjoin or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer, or agency acting or purporting to act under that title, or under any other law or authority; fixes the time limit within which any such action must be brought; and fixes the venue of any such suit both as to petitioner and respondent, as well as the modus operandi to render the respondent subject to the jurisdiction of the district court issuing the writ of injunction.

The purpose of this amendment is to assure any holder of a priority or allocation granted by any person, officer, or agency, under title III, or under any other law or authority, whenever the same may have been ordered suspended by the issuing authority the right to invoke the aid of the United States district court for the district in which the petitioner has his principal place of business, to enjoin any such suspension order, and to give that district court jurisdiction both of the subject matter and of the issuing authority.

The amendment applies only to "suspension orders," which are orders withholding or withdrawing priorities or allocations because of violations of the regulations or orders of the agency issuing the suspension order. It is not intended to and does not apply to allocation or priority orders or decisions made by the agency nor to cases where such allocations or priorities must be modified or revoked because of changing supply conditions or changes in war or es-

sential civilian needs. Also the amendment does not affect the provision for judicial review of suspension orders contained in the Stabilization Extension Act of 1944 with respect to the Office of Price Administration suspension orders. Thus, the provision in that Act, conditioning interlocutory relief upon the entry of an order enjoining the applicant for violations pending review, remains in effect as to suspension orders issued by the Office of Price Administration.

The ACTING PRESIDENT pro tempore. If there be no amendments to be proposed, the question is on the third reading of the bill.

The bill was read the third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall it pass?

The bill, H. R. 4993, was passed.

BILLS AFFECTING THE DISTRICT OF COLUMBIA

Mr. GEORGE obtained the floor.

Mr. BILBO. Mr. President, will the Senator yield to me?

Mr. GEORGE. Does the Senator wish to move to have the Senate take up certain District of Columbia measures at this time?

Mr. BILBO. Yes; I wish to have certain District of Columbia bills considered at this time.

Mr. GEORGE. I yield to the Senator from Mississippi.

Mr. BILBO. Mr. President, yesterday, by agreement with the majority leader and the minority leader, it was agreed that at 5 o'clock today the Senate would lay aside the unfinished business for the purpose of considering and passing certain bills for the District of Columbia, some of which relate to matters which are emergencies. Therefore, I wish to ask unanimous consent that certain District of Columbia bills be considered, beginning with Calendar No. 1212, House bill 1951.

Before asking that the Senate consider the bills, I desire to say that the Committee on the District of Columbia considered the various House bills, and, with one or two exceptions, they were approved by the committee without any amendment whatsoever. The bills have met with the approval of the minority leader, who sits on the other side of the aisle, after he had consulted the members of the committee.

There is nothing extraordinary about any of the bills, but they constitute very necessary legislation, and some of them are emergency matters. For instance, one of them relates to the inauguration of the President.

So, Mr. President, I ask unanimous consent that the Senate proceed to consider the bills to which I have referred, beginning with Calendar No. 1212, House bill 1951.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi has asked unanimous consent that the Senate proceed to the consideration of certain measures relating to the District of Columbia, beginning with Calendar No. 1212, House bill 1951. Is there objection?

Mr. WHITE. Mr. President, reserving the right to object, let me say, especially for the information of Senators on this side of the Chamber, that I have con-

sulted, so far as it has been possible to do so, the minority members of the committee, and I know of no objection—I speak for the minority of the committee at the moment—to these bills.

The ACTING PRESIDENT pro tempore. Without objection, the clerk will proceed to state the bills referred to, beginning with Calendar No. 1212, House bill 1951.

AMENDMENT OF DISTRICT OF COLUMBIA MOTOR VEHICLE PARKING FACILITY ACT OF 1942

The bill (H. R. 1951) to amend the District of Columbia Motor Vehicle Parking Facility Act of 1942, approved February 16, 1942, was considered, ordered to a third reading, read the third time, and passed.

PREVENTION OF ATTACHMENT OR GARNISHMENT OF SALARY OR WAGES IN THE DISTRICT

The bill (H. R. 2116) to amend the laws of the District of Columbia relating to exemption of property from judicial process, the assignment of salary or wages, and the advance payment of salary or wages for the purpose of preventing attachment or garnishment, was considered, ordered to a third reading, read the third time, and passed.

GRANTING OF ADDITIONAL POWERS TO DISTRICT COMMISSIONERS

The Senate proceeded to consider the bill (H. R. 2644) to grant additional powers to the Commissioners of the District of Columbia, and for other purposes.

Mr. BILBO. Mr. President, Mr. West, the Corporation Counsel for the District of Columbia, has submitted an amendment which would make the bill apply to sureties on the bonds involved. I offer the amendment, and send it to the desk.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The CHIEF CLERK. On page 4, in line 10, it is proposed to strike out the period, and insert a colon and the following: "Provided, however, That nothing in this section shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries, as the case may be."

The amendment was agreed to.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time and passed.

REGULATION OF PRACTICE OF THE HEALING ART

The bill (H. R. 3150) to amend an act entitled "An act to regulate the practice of the healing art to protect the public health in the District of Columbia," approved February 27, 1929, was considered, ordered to a third reading, read the third time, and passed.

REGULATION OF MOTOR-VEHICLE TRAFFIC AND INCREASE OF NUMBER OF JUDGES OF POLICE COURT

The bill (H. R. 3313) to amend section 10 of the act of March 3, 1925, entitled "An act to provide for the regulation of

motor-vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes," as amended, was considered, ordered to a third reading, read the third time, and passed.

DISPOSAL OF DEAD HUMAN BODIES IN THE DISTRICT OF COLUMBIA

The bill (H. R. 3619) to amend sections 675 and 676 of the act entitled "An act to establish a Code of Law for the District of Columbia," approved March 3, 1901, regulating the disposal of dead human bodies in the District of Columbia, was considered, ordered to a third reading, read the third time, and passed.

REGULATION OF MOTOR-VEHICLE TRAFFIC AND INCREASE OF NUMBER OF JUDGES OF POLICE COURT

The bill (H. R. 3621) to amend an act entitled "An act to provide for the regulation of motor-vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes," was considered, ordered to a third reading, read the third time, and passed.

APPOINTMENT OF NOTARIES PUBLIC BY DISTRICT COMMISSIONERS

The bill (H. R. 3720) to authorize the Commissioners of the District of Columbia to appoint notaries public was considered, ordered to a third reading, read the third time, and passed.

EXTENSION OF DISTRICT HEALTH REGULATIONS TO GOVERNMENT RESTAURANTS

The Senate proceeded to consider the bill (H. R. 4867) to extend the health regulations of the District of Columbia to Government restaurants within the District of Columbia.

Mr. BILBO. Mr. President, House bill 4867 is a measure providing for proper sanitary inspection of all restaurants now being conducted by Government agencies in the District of Columbia. After the committee reported the bill, I discovered that it would apply to the House and Senate restaurants, which are under the Rules Committee of the Senate and the House and under Mr. Lynn, the Architect of the Capitol. I wish to have the Capitol restaurants exempted from the provisions of the bill. Therefore, I offer the amendment which I send to the desk and ask to have stated.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The CHIEF CLERK. On page 2, after line 5, it is proposed to insert:

SEC. 2. This act shall not apply to the United States Senate and House of Representatives restaurants.

The amendment was agreed to.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time and passed.

Mr. DANAHER. Mr. President, I desire to ask the Senator from Mississippi to please tell us whether any of these bills deal with the subject of the garnishment of salaries of Federal workers.

Mr. BILBO. No, sir.

[PUBLIC LAW 509—78TH CONGRESS]

[CHAPTER 614—2D SESSION]

[H. R. 4993]

AN ACT

To amend Public, Numbered 507, Seventy-seventh Congress, second session, an Act to further expedite the prosecution of the war, approved March 27, 1942, known as the Second War Powers Act, 1942.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title XV, section 1501, of the Second War Powers Act, 1942, approved March 27, 1942, is amended to read as follows:

"SEC. 1501. Titles I to VII, inclusive, and titles IX, XI, and XIV of this Act, and the amendments to existing law made by any such title, shall remain in force only until December 31, 1945, or until such earlier time as the two Houses of Congress by concurrent resolution, or the President, may designate, and after such amendments cease to be in force any provision of law amended thereby shall be in full force and effect as though this Act had not been enacted; but no court proceeding brought under any such title shall abate by reason of the termination hereunder of such title."

Title III of the Second War Powers Act, 1942, is hereby amended by adding at the end thereof the following:

"(9) The district courts of the United States are hereby given exclusive jurisdiction to enjoin or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer, or agency, acting or purporting to act hereunder, or under any other law or authority.

"Any action to enjoin or set aside any such order shall be brought within five days after the service thereof.

"No suspension order shall take effect within five days after it has been served, or, if an application for a stay is made to the issuing authority within such five-day period, until the expiration of five days after service of an order denying the stay.

"The venue of any such suit shall be in the district court of the United States for the district in which the petitioner has his principal place of business; and the respondent shall be subject to the jurisdiction of such court after ten days before the return day of the writ, either when (1) process shall have been served on any district manager or other agent of the respondent of similar or superior status; or (2) notice by registered mail shall have been given to respondent, or to the office of the Attorney General of the United States."

Approved December 29, 1944.

